DOCUMENT RESUME

ED 445 294 CG 030 345

TITLE	Marketing Violent Entertainment to Children: A Review of Self-Regulation and Industry Practices in the Motion Picture, Music Recording & Electronic Game Industries [with] Appendices A-K. Report.
INSTITUTION	Federal Trade Commission, Washington, DC.
PUB DATE	2000-09-00
NOTE	345p.
PUB TYPE	Reports - Evaluative (142)
EDRS PRICE	MF01/PC14 Plus Postage.
DESCRIPTORS	*Adolescents; Cultural Influences; Federal Regulation; Film Industry; *Films; *Mass Media Role; Parent Role; *Popular Music; *Video Games; *Violence
IDENTIFIERS	Clinton (Bill); Entertainment; Federal Trade Commission

ABSTRACT

In June of 1999, President Clinton empowered the Federal Trade Commission to study whether movie, music recording, and computer and video game industries were advertising products with violent content to youngsters. Specifically he raised two questions: Do these industries promote products they themselves acknowledge warrant parental caution in venues where children make up a substantial percentage of the audience? And are these advertisements intended to attract children and teenagers? The FTC designed a study to provide information to three groups of decision-makers: (1) elected officials and policymakers, (2) the entertainment media industries, and (3) parents. The report of this study is divided into seven sections. Section One is "Introduction." Section Two, "The Motion Picture Industry Self-Regulatory System," describes the rating process and advertising placement standards. Section Three, "Marketing Movies to Children," discusses the rating of films. Section Four, "The Music Recording Industry Parental Advisory Labeling Program," discusses labeling systems. Section Five, "Marketing Music Recordings to Children," addresses advertising. Section Six, "The Electronic Game Industry Self-Regulatory System," reviews game regulatory systems. Section Seven, "Marketing Electronic Games to Children," explains marketing of games. Section Eight, "Conclusion," argues whether the industry should expand codes that prohibit target marketing. The study found that members of the motion picture, music recording, and electronic game industries routinely target children under 17 as the audience for movies, music, and games that they themselves acknowledge are inappropriate for children or warrant parental caution due to their level of violence content. Three recommendations are made in the report: (1) the industries under review should establish or expand codes that prohibit target marketing and impose sanctions for violations; (2) the industries should improve self-regulatory system compliance at the retail level; and (3) the industries should increase parental awareness of the ratings and labels. A separate book includes 11 appendixes. (Author/JDM)

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MARKETING VIOLENT ENTERTAINMENT TO CHILDREN:

A REVIEW OF SELF-REGULATION AND INDUSTRY PRACTICES IN THE MOTION PICTURE, MUSIC RECORDING & ELECTRONIC GAME INDUSTRIES

REPORT OF THE
FEDERAL TRADE COMMISSION

SEPTEMBER 2000

CG030345

Federal Trade Commission

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EXECUTIVE SUMMARY

On June 1, 1999, President Clinton asked the Federal Trade Commission and the Department of Justice to undertake a study of whether the movie, music recording, and computer and video game industries market and advertise products with violent content to youngsters. The President's request paralleled Congressional calls for such a study. The President raised two specific questions: Do the industries promote products they themselves acknowledge warrant parental caution in venues where children make up a substantial percentage of the audience? And are these advertisements intended to attract children and teenagers?

For all three segments of the entertainment industry, the answers are plainly "yes."

Although the motion picture, music recording and electronic game industries have taken steps to identify content that may not be appropriate for children, companies in those industries routinely target children under 17 as the audience for movies, music and games that their own rating or labeling systems say are inappropriate for children or warrant parental caution due to their violent content. Moreover, children under 17 frequently are able to buy tickets to R-rated movies without being accompanied by an adult and can easily purchase music recordings and electronic games that have a parental advisory label or are restricted to an older audience. The practice of pervasive and aggressive marketing of violent movies, music and electronic games to children undermines the credibility of the industries' ratings and labels. Such marketing also frustrates parents' attempts to make informed decisions about their children's exposure to violent content.

For years – over backyard fences and water coolers, on talk radio and in academic journals – parents, social scientists, criminologists, educators, policymakers, health care providers, journalists and others have struggled to understand how and why some children turn to violence. The dialogues took on new urgency with the horrifying school shooting on April 20, 1999, in Littleton, Colorado.

Scholars and observers generally have agreed that exposure to violence in entertainment media alone does not cause a child to commit a violent act and that it is not the sole, or even necessarily the most important, factor contributing to youth aggression, anti-social attitudes and violence. Nonetheless, there is widespread agreement that it is a cause for concern. The Commission's literature review reveals that a majority of the investigations into the impact of media violence on children find that there is a high correlation between exposure to media violence and aggressive, and at times violent, behavior. In addition, a number of research efforts report that exposure to media violence is correlated with increased acceptance of violent behavior in others, as well as an exaggerated perception of the amount of violence in society.

For their part, the entertainment industries have recognized these concerns and taken steps to alert parents to violent or explicit content through self-regulatory product rating or labeling programs. Self-regulation by these industries is especially important considering the First Amendment protections that prohibit government regulation of content in most instances.

The self-regulatory programs of the motion picture, music recording and electronic game industries each address violence, as well as sexual content, language, drug use and other explicit content that may be of concern to parents. In keeping with the President's request, the Commission focused on the marketing of entertainment products designated as violent under these systems. In its analysis, the Commission accepted each industry's determination of whether a particular motion picture, music recording or electronic game contains violent content; the Commission did not examine the content itself.

The motion picture industry uses a rating board to rate virtually all movies released in the United States, requires the age-related rating to appear in advertising and makes some effort to review ads for rated movies to ensure that their content is suitable for general audiences. The music recording industry recommends the use of a general parental advisory label on music with "explicit content." The decision to place a parental advisory label on a recording is made by the artist and the music publishing company and involves no independent third-party review; nor does the industry provide for any review of marketing and advertising. In late August 2000, the recording industry trade association recommended that recording companies not advertise explicit-content labeled recordings in media outlets with a majority under-17 audience. The electronic game industry requires games to be labeled with age- and content-based rating information and requires that the rating information appear in advertising. Only the electronic game industry has adopted a rule prohibiting its marketers from targeting advertising for games to children below the age designations indicated by the rating.

The Commission carefully examined the structure of these rating and labeling systems, and studied how these self-regulatory systems work in practice. The Commission found that despite the variations in the three industries' systems, the outcome is consistent: individual companies in each industry routinely market to children the very products that have the industries' own parental warnings or ratings with age restrictions due to their violent content. Indeed, for many of these products, the Commission found evidence of marketing and media plans that expressly target children under 17. In addition, the companies' marketing and media plans showed strategies to promote and advertise their products in the media outlets most likely to reach children under 17, including those television programs ranked as the "most popular" with the under-17 age group, such as *Xena: Warrior Princess*, *South Park* and *Buffy the Vampire Slayer*; magazines and Internet sites with a majority or substantial (*i.e.*, over 35 percent) under-17 audience, such as *Game Pro*, *Seventeen* and *Right On!*, as well as *mtv.com*, *ubl.com* and *happypuppy.com*; and teen hangouts, such as game rooms, pizza parlors and sporting apparel stores.

Movies. Of the 44 movies rated R for violence the Commission selected for its study, the Commission found that 35, or 80 percent, were targeted to children under 17. Marketing plans for 28 of those 44, or 64 percent, contained express statements that the film's target audience included children under 17. For example, one plan for a violent R-rated film stated, "Our goal was to find the elusive teen target audience and make sure everyone between the ages of 12-18 was exposed to the film." Though the marketing plans for the remaining seven R-rated films did not expressly identify an under-17 target audience, they led the Commission to conclude that children under 17 were targeted nonetheless. That is, the plans were either extremely similar to the plans of the films that did identify an under-17 target audience, or they detailed actions synonymous with targeting that age group, such as promoting the film in high schools or in publications with majority under-17 audiences.

Music. Of the 55 music recordings with explicit content labels the Commission selected for its study, marketing plans for 15, or 27 percent, expressly identified teenagers as part of their target audience. One such plan, for instance, stated that its "Target audience" was "Alternative/urban, rock, pop, hardcore – 12-34." The marketing documents for the remaining 40 explicit-content labeled recordings examined did not expressly state the age of the target audience, but they detailed the same methods of marketing as the plans that specifically identified teens as part of their target audience, including placing advertising in media that would reach a majority or substantial percentage of children under 17.

Games. Of the 118 electronic games with a Mature rating for violence the Commission selected for its study, 83, or 70 percent, targeted children under 17. The marketing plans for 60 of these, or 51 percent, expressly included children under 17 in their target audience. For example, one plan for a game rated Mature for its violent content described its "target audience" as "Males 12-17 – Primary Males 18-34 – Secondary." Another plan referred to the target market as "Males 17-34 due to M rating (the true target is males 12-34)." Documents for the remaining 23 games showed plans to advertise in magazines or on television shows with a majority or substantial under-17 audience. Most of the plans that targeted an under-17 audience set age 12 as the younger end of the spectrum, but a few plans for violent Mature-rated games targeted children as young as six.

Further, most retailers make little effort to restrict children's access to products with violent content. Surveys conducted for the Commission in May through July 2000 found that just over half the movie theaters admitted children ages 13 to 16 to R-rated films even when not accompanied by an adult. The Commission's surveys also indicate that unaccompanied children have various strategies to see R-rated movies when theaters refuse to sell them tickets. Additionally, the Commission's surveys showed that unaccompanied children ages 13 to 16 were able to buy both explicit content recordings and Mature-rated electronic games 85 percent of the time.

Although consumer surveys show that parents value the existing rating and labeling systems, they also show that parents' use and understanding of the systems vary. The surveys also consistently reveal high levels of parental concern about violence in the movies, music and video games their children see, listen to and play. These concerns can only be heightened by the extraordinary degree to which young people today are immersed in entertainment media, as well as by recent technological advances such as realistic and interactive video games. The survey responses indicate that parents want and welcome help in identifying which entertainment products might not be suitable for their children.

Since the President requested this study over a year ago, each of the industries reviewed has taken positive steps to address these concerns. Nevertheless, the Commission believes that all three industries should take additional action to enhance their self-regulatory efforts. The industries should:

1. *Establish or expand codes that prohibit target marketing to children and impose sanctions for violations.* All three industries should improve the usefulness of their ratings and labels by establishing codes that prohibit marketing R-rated/M-rated/explicit-labeled products in media or venues with a substantial under-17 audience. In addition, the Commission suggests that each industry's trade associations monitor and encourage their members' compliance with these policies and impose meaningful sanctions for non-compliance.

2. *Increase compliance at the retail level.* Restricting children's retail access to entertainment containing violent content is an essential complement to restricting the placement of advertising. This can be done by checking identification or requiring parental permission before selling tickets to R movies, and by not selling or renting products labeled "Explicit" or rated R or M, to children.

3. *Increase parental understanding of the ratings and labels.* For parents to make informed choices about their children's entertainment, they must understand the ratings and the labels, as well as the reasons for them. That means the industries should all include the reasons for the rating or the label in advertising and product packaging and continue their efforts to educate parents – and children – about the meanings of the ratings and descriptors. Industry should also take steps to better educate parents about the ratings and labels.

The Commission emphasizes that its review and publication of this Report, and its proposals to improve self-regulation, are not designed to regulate or even influence the content of movies, music lyrics or electronic games. The First Amendment generally requires that creative decisions about content be left to artists and their distributors. Rather, the Commission believes the industries can do a better job of helping parents choose appropriate entertainment for their children by providing clear and conspicuous notification of violent content. Industry self-regulation also should support parents' decisions by prohibiting the direct sale and marketing to children of products labeled as inappropriate or warranting parental guidance due to their violent content.

Implementation of the specific suggestions outlined above would significantly improve the present self-regulatory regimes. The Report demonstrates, however, that mere publication of codes is not sufficient. Self-regulatory programs can work only if the concerned industry associations actively monitor compliance and ensure that violations have consequences. The Commission believes that continuous public oversight is also required and that Congress should continue to monitor the progress of self-regulation in this area.

I. INTRODUCTION

A. President's June 1, 1999 Request for a Study and the FTC's Response

On June 1, 1999, following the horrifying school shooting in Littleton, Colorado that increased public calls for a national response to youth violence, President Clinton requested that the Federal Trade Commission and the Department of Justice conduct a study of whether the motion picture, music recording, and computer and video game industries market and advertise violent entertainment material to children and teenagers.[1] Specifically, the President requested that the study ascertain whether entertainment media products that the industries determine are inappropriate for children or otherwise warrant a parental advisory due to their violent content are promoted in media outlets for which children comprise a substantial percentage of the audience. The President also urged the Commission to examine whether these advertisements are intended to attract underage audiences. President Clinton's request paralleled congressional proposals for such a study.[2]

In response to the President's request and Congress's concerns, the FTC initiated this study[3] to obtain information regarding the three media industries' self-regulation efforts and marketing practices.* The Commission's study is designed to provide information to three critical groups of decision makers: (1) elected officials and policymakers, including the President and Congress, who have raised concerns about this issue; (2) the entertainment media industries, who develop and implement the existing self-regulatory systems; and (3) parents, who are faced with the challenge of determining what is appropriate for their minor children.

B. Public Concerns About Entertainment Media Violence

The Columbine High School shooting in Littleton heightened the public's existing concerns about violence committed by children.[4] Although the rate of violence perpetrated by young people has declined in the 1990's, the rate for murders committed by youths in the United States is still substantially higher than in other industrialized countries.[5] For the past few decades, parents, social scientists, criminologists, educators, policymakers, health care providers, journalists, and others have struggled to understand how and why children turn to violence.[6] Following a plethora of news reports suggesting that the boys involved in the Columbine killings were immersed in a violent entertainment subculture,[7] many observers focused on the teenagers' exposure to images of violence in entertainment media as a cause of the Columbine murders.[8]

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* The Department of Justice provided funding and technical assistance to the FTC for this study, but did not draft this report or its appendices. The analysis, recommendations, and opinions expressed in this report and its appendices are those of the FTC, and do not necessarily represent the positions or views of the Department of Justice.

While the entertainment media received a great deal of blame for youth violence in the past year,[9] most people agree that exposure to media violence alone does not cause a child to commit a violent act. Although several major public health organizations recently voiced their shared conviction that the viewing of entertainment media violence can lead to increases in aggressive attitudes, values, and behavior in children,[10] they also have acknowledged that it is not the sole, or even necessarily the most important, factor contributing to youth aggression, anti-social attitudes, and violence.[11] They, and the researchers and advocates who have studied youth violence, posit that a range of other factors – such as child abuse and neglect, victimization, bullying, drug and alcohol abuse, exposure to violence in the home, neurobiological indicators, and low socioeconomic status – can interrelate to cause youth violence.[12] Some observers focus on children's access to handguns as the cause for the high fatality rates associated with youth violence in America.[13] Others look for cultural explanations.[14]

Even those who disagree that media violence causes violent behavior, however, concede that a child's exposure to violence in the media can be a concern.[15] Indeed, by including violence as a component in developing their parental advisory labeling and rating systems, the entertainment media have recognized that violence is an issue of societal concern.[16] As Thom Mount, president of the Producers Guild of America, acknowledged after Columbine: "It is not that violent pictures create more violence, but the constant litany of gratuitous violence is destructive of the fabric of the culture because it lowers our threshold for sensitivity to the issue."[17]

C. Overview of the Commission's Study

Focus on Self-Regulation: For decades, the FTC has recognized the important role that self-regulation can serve in many industries and has worked with industry groups to develop sound self-regulatory initiatives, including those involving industry advertising practices.[18] A well-constructed self-regulatory system can be more prompt, flexible, and effective than government regulation, and can be especially appropriate when government intervention would raise significant First Amendment concerns. The products studied in this Report – motion pictures, music recordings, and computer and video games ("electronic games") – are forms of expression protected under the First Amendment.[19] Given that the concerns examined in this Report stem from the violent content of some of these products, effective industry self-regulatory responses are even more important and appropriate than in most other industries.

The Commission's study of the motion picture, music recording, and electronic game industries focused on the marketing of entertainment products designated as violent under the self-regulatory systems currently in use by these industries.[20] In its analysis, the Commission accepted each industry's determination of whether a particular motion picture, music recording, or electronic game contains violent or explicit content.[21]

Structure of the Report: This Report examines: (1) the structure and scope of the rating or labeling system that each industry uses to advise parents that its products contain violent content that may be unsuitable for children, including whether the system discourages the marketing or sale of violent products to minors; and (2) the actual practices of companies that market or sell such violent entertainment to minors in light of these self-regulatory systems. To answer the President's questions of whether these products are advertised in media outlets for which children comprise a substantial percentage of the audience and whether the advertisements were intended to attract children, the Commission reviewed the entertainment industries' marketing and media plans and considered their advertising placement strategies. For print and online advertising, the Commission looked at whether advertising reached an audience of 35% or more under 17. Consistent with industry marketing and media plans for television, the Commission looked at advertising placement on those programs ranked as the "most popular" with the under-17 age group, which includes those with the highest U.S. teen audience.

The Report suggests possible modifications to the existing self-regulatory systems to improve their utility to parents, guardians, and other care-givers ("parents") in achieving their stated goal: to help parents make decisions about which entertainment products their children should and should not view, listen to, or play. A number of appendices supplement the information provided in the Report.

Sources: The sources for the Report include documents and other information (including sample sound recordings, movie previews, electronic game demonstration disks, and magazine and television advertisements) voluntarily submitted by over 60 companies in the motion picture, music recording, and electronic game industries, including movie studios, theaters, recording labels, game developers and publishers, retailers, and media outlets.[22] The Report also is based on voluntary submissions by and discussions with the major media industries' trade associations about their (and their members') self-regulatory efforts.[23] Much of the material that the industry associations and companies submitted in response to the FTC's requests contained confidential commercial or financial information under relevant statutes and rules.[24] Accordingly, this study presents certain of the Commission's findings in anonymous and/or aggregated form. In addition, a substantial amount of information was provided by interested government agencies, public health organizations, academics, and parent and consumer advocacy groups,[25] as well as consumers themselves through various surveys and polls including surveys designed and conducted specifically for this study.[26]

II. THE MOTION PICTURE INDUSTRY SELF-REGULATORY SYSTEM

> *The basic mission of the rating system is a simple one: to offer parents some advance information about movies so that parents can decide what movies they want their children to see or not to see.*
>
> *– Jack Valenti, President of the Motion Picture Association of America*[27]

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The motion picture rating system, which was established in 1968 as a joint venture between the Motion Picture Association of America ("MPAA") and the National Association of Theatre Owners ("NATO"), is the longest-running of the self-regulatory systems the Commission examined. It was crafted following a pair of U.S. Supreme Court decisions upholding the power of states to regulate children's access to materials protected by the First Amendment.[28] To curtail a proliferation of local censorship boards, the major film studios and theaters created a single, nationwide rating system.

Although the system is voluntary, all MPAA member companies have agreed not to distribute a film without a rating.[29] As a result, the vast majority of films are rated. A high percentage of parents are familiar with motion picture ratings (surveys show more than 90% awareness[30]) and a large majority (more than 70%[31]) find the ratings useful.

A. *Scope of Commission's Review*

In examining the motion picture industry's self-regulatory program and the marketing of films to children, the Commission reviewed documents provided by the MPAA and its member studios; NATO and its member theaters, as well as theater chains that do not belong to NATO; and publicly available materials concerning the system.

More specifically, the Commission studied the marketing of 44 violent R-rated films and 20 violent PG-13-rated films distributed by nine major studios from 1995-1999.[32] In selecting these films, the Commission chose R- and PG-13-rated movies that the MPAA's rating body had determined should receive such a rating at least in part for violence, including films the industry trade press had referred to as teen or children's movies. Thus, these 64 films are not a random sample of all violent R and PG-13 movies produced by the MPAA member studios over the relevant time period.

The Commission studied "media plans," which outline where the television, radio, print, and Internet advertising was placed and describe the target audiences the studios intended the advertising to reach; promotional reports for many of these films, which detail the vast array of promotional activities used to generate consumer awareness and interest in a movie; and studio research conducted on test audiences for the films and their advertising. The studios and the theater chains also supplied trailer reports detailing which trailers preceded certain features.[33]

B. Operation of the Motion Picture Self-Regulatory System

1. The rating process

The motion picture industry has put in place a formalized rating system (including an appeals process) that is designed to impose a measure of objectivity and consistency across the broad array of subjects and styles encompassed by modern filmmaking. Although this system has been criticized over the years,[34] it has remained intact for more than 30 years and is well-established with the American public.

The current categories for film ratings, as defined by the MPAA and NATO, follow:

G **General Audiences - All ages admitted**

Signifies that the film rated contains nothing most parents will consider offensive for even their youngest children to see or hear. Nudity, sex scenes, and scenes of drug use are absent; violence is minimal; snippets of dialogue may go beyond polite conversation but do not go beyond common everyday expressions.

Recent examples: Chicken Run; Fantasia 2000

PG **Parental Guidance Suggested - Some material may not be suitable for children.**

Signifies that the film rated may contain some material parents might not like to expose to their young children – material that will clearly need to be examined or inquired about before children are allowed to attend the film. Explicit sex scenes and scenes of drug use are absent; nudity, if present, is seen only briefly, horror and violence do not exceed moderate levels.

Recent examples: The Adventures of Rocky and Bullwinkle; The Kid

PG-13 **Parents Strongly Cautioned - Some material may be inappropriate for children under 13.**

Signifies that the film rated may be inappropriate for pre-teens. Parents should be especially careful about letting their younger children attend. Rough or persistent violence is absent; sexually-oriented nudity is generally absent; some scenes of drug use may be seen; some use of one of the harsher sexually-derived words may be heard.

Recent examples: Mission Impossible 2; The Perfect Storm; Big Momma's House

R **Restricted - Under 17 requires accompanying parent or adult guardian (age varies in some jurisdictions).**

Signifies that the rating board has concluded that the film rated may contain some adult material. Parents are urged to learn more about the film before taking their children to see it. An R may be assigned due to, among other things, a film's use of language, theme, violence, sex or its portrayal of drug use.

Recent examples: Gladiator; Shaft; The Patriot; Me, Myself and Irene

NC-17 **No one 17 and Under Admitted.**

Signifies that the rating board believes that most American parents would feel that the film is patently adult and that children age 17 and under should not be admitted to it. The film may contain explicit sex scenes, an accumulation of sexually-oriented language, and/or scenes of excessive violence. The NC-17 designation does not, however, signify that the rated film is obscene or pornographic in terms of sex, language or violence.[35]

Recent examples: None

Each film assigned a rating other than G also receives a brief explanation for the film's rating, *e.g.*, "Rated R for terror, violence and language," or "Rated PG-13 for intense sci-fi violence, some sexuality and brief nudity."

The Classification and Ratings Administration ("CARA") determines the ratings and explanations. Qualifications for membership in CARA are parenting experience and no connection to the film industry. Currently, CARA has 12 members (known as raters), and two Co-Chairs, all of whom are approved by, and serve at the discretion of, the President of the MPAA.[36]

A Policy Review Committee consisting of MPAA and NATO officials sets the rules that govern CARA procedures. This Committee instructs CARA board members to give each film the rating that, based on theme, language, nudity and sexual content, violence, drug use, and "other relevant matters,"[37] they think most American parents would consider appropriate for viewing by children.[38] A simple majority vote determines the rating.[39]

The studio submitting the film can accept the CARA rating, appeal, or edit the film to achieve a less severe rating. Rating appeals are rare;[40] more often, a distributor will edit the film to achieve a desired rating. However, if a studio chooses to appeal the rating, an Appeals Board views the film. Unlike the original CARA raters, who have no connection to the film industry, the Appeals Board is made up of industry members, with MPAA and NATO members comprising the vast majority of the votes.[41] For an appeal to be successful, two thirds of the Appeals Board must conclude that the rating assigned by CARA was "clearly erroneous."[42]

As noted above, violence is one of the factors that CARA members specifically consider in assigning ratings to the films they review. According to the MPAA, PG-13 films have no rough or persistent violence, and the existence of such violence will cause a film to be rated R.[43] Nevertheless, the Commission's study of the ratings explanations indicates that CARA often describes the violence in PG-13 films in terms synonymous with rough and persistent violence, for example, as "intense," "strong," "disturbing," "brutal," "graphic," "shocking," "non-stop," and "pervasive." These words are identical or similar to words often used to describe violence in R-rated movies,[44] causing some to question the usefulness of the ratings for helping parents distinguish the amount and kind of violence in PG-13 films from that in R-rated films.[45] Parental uncertainty over the violent content contained in PG-13 films is of concern because, as will be described in Section III of this Report, these films frequently are marketed to children as young as six.

2. Review of advertising for content and rating information

The motion picture industry's self-regulatory system is the only one of the three examined by the Commission that includes substantive review and pre-approval of advertising. For a film to use the MPAA-trademarked rating, all advertising materials for a film, including all television and radio commercials, print advertising, Web sites, and trailers (previews shown in theaters), must be approved by the MPAA's Advertising Administration.[46] The Advertising Administration does not approve advertising for products related to motion pictures, such as action figures, toys, clothing, or other licensed products.

Review by the Advertising Administration is designed to accomplish two goals. The first is to ensure the accurate dissemination of the rating symbol in all advertising for a film. MPAA rules require that a film's letter rating be displayed in all advertising. The Commission's review suggests that the Advertising Administration generally achieves this goal.

The Advertising Administration's other goal is to ensure that the content of a film's advertising, regardless of the film's rating, is appropriate for even the youngest audience. With one exception described below, the MPAA requires the Advertising Administration to disapprove advertising if it would not pass muster with most parents as suitable for young children; that is, the content of the advertising must be the equivalent of a G-rated movie.[47] A film distributor that disagrees with the Advertising Administration's decision regarding the content of an advertisement can appeal the decision directly to the MPAA President.[48]

The Commission's review indicates that the Advertising Administration is less successful at meeting its second goal. Theatrical trailers illustrate the point. The Advertising Administration approves two types of trailers, which, based on the Commission's review of studio media plans, appear to be the first widely disseminated advertisements for a film. The first type, known as an "all audience" trailer, is for general audiences and can be shown before any feature film.[49] According to the MPAA, "There will be, in 'all audiences' trailers, no scenes that caused the feature to be rated PG, PG-13, R, or NC-17."[50] The second type of trailer is for restricted audiences and can be shown only before films rated R or NC-17.[51]

A review of materials submitted to the Commission suggests that, although the Advertising Administration restricts the material allowed in all audience trailers, it does not require the studios to remove everything that would cause a movie to be given a rating more restrictive than G. Trailers are approved by the Advertising Administration and shown in theaters long before a film is rated; consequently, for these "teaser trailers,"[52] the Advertising Administration has no way to know what will cause the raters to rate a film PG or higher.[53] And CARA raters do not evaluate trailers or other advertising.

The Commission found numerous examples when trailers approved for "all audiences" contained material that the Advertising Administration's Handbook says might "engender criticism by parents."[54] For example, the "all audience" trailer for *I Know What You Did Last Summer* contained verbal references to mutilations (references to decapitation and to a person being "gutted with a hook") and drug use. A trailer for *Scream 2* contained a verbal reference to mutilation (that a woman had been stabbed seven times) and several visual depictions of violence against women (women being pursued by a masked, knife-wielding killer).[55]

Television advertising also is affected when material causing a rating more restrictive than G is not edited out of an "all audience" trailer. Television commercials for movies generally are shortened versions of the trailers; they thus may contain some of the same violent material. Although the MPAA states that "TV spots containing sexual references, violence, blood or profanity are not acceptable,"[56] the Commission's review shows that the television networks sometimes require the deletion of certain scenes or restrict the airing of commercials the MPAA had approved for general audiences because the advertisement is too violent.

C. Issues Not Addressed by the Motion Picture Self-Regulatory System

1. Accessibility of reasons for ratings

The MPAA first integrated brief rating explanations – for example, *Rated PG-13 for intense horror sequences* – into the rating system in 1990.[57] According to the Association, these explanations are as much a part of the rating as the letter symbol.[58] The MPAA sends these explanations to newspapers for use in movie reviews and to theaters to enable box office personnel to respond to questions from patrons. The MPAA's NATO partners have requested that the studios also place these explanations in advertising,[59] but the MPAA does not require this information in advertising for movies and the studios do not include it in their ads. According to the MPAA, typical newspaper ads do not contain enough space for the rating explanations to be legible, given the other information that must be included in the ads.[60]

Recently, the MPAA and its members announced that print advertising would include a reference to a Web site, www.filmratings.com, where people can find the ratings explanations issued for individual films.[61] Although a step in the right direction, this approach requires parents to seek out this important information rather than placing it at their fingertips in the ads themselves;[62] moreover, many do not have ready access to the Internet.[63] Further, the Web site reference is not included in all print ads and is not in advertising other than print ads, such as television commercials or Web sites promoting individual films.[64]

Consumer survey evidence suggests that parents want more from the movie rating system. Although it appears that over 90% of parents are familiar with motion picture ratings and about 75% find the ratings useful,[65] some surveys show the system could do a better job of informing parents about the level of violence in movies. For example, a survey of parents conducted by the Commission for this Report in May and June 2000 found high satisfaction with the movie rating system in general but much less satisfaction regarding the information about violence the system provides: 50% of the parents surveyed said the movie rating system does a fair or poor job of informing them of the level of violence in a movie, while 48% stated the rating system does an excellent or good job.[66] Similarly, a Gallup poll conducted in June 1999 reported that 58% of the respondents believed that the movie industry does not provide adults with enough information about violent content to make decisions about what is appropriate for children, while 40% stated that it does.[67]

Parents' Responses - Movies	
Who selects the product?	
An adult	21%
An adult and the child together	78%
The child	2%
Who purchases the product?	
An adult	60%
An adult and the child together	36%
The child	3%
Parent restricts child's use of the product	90%
Parent is aware of a rating system for the product	91%
How often do you use the rating system?	
Some, most, or all of the time	88%
Rarely or never	11%
Are you satisfied with the rating system?	
Somewhat or very satisfied	81%
Somewhat or very dissatisfied	17%
How does the rating system do in informing you about violence?	
Good or excellent	48%
Fair or poor	50%

2. Advertising placement standards

The movie self-regulatory system does not have a code of conduct or guidelines regarding advertising placement or marketing to children. The MPAA's Advertising Administration reviews advertising solely for content. Once the MPAA is satisfied that the advertising contains nothing that "most parents would find offensive for their children to see or hear,"[68] it plays no further role in the marketing of the film.[69] Significantly, the motion picture studios, unlike the electronic game industry, believe that it is appropriate to target advertising for R-rated films to children under 17 and to target advertising for PG-13-rated films to children under 13, on the grounds that these ratings are merely cautionary warnings to parents.[70] The industry notes, among other reasons, that, "Many socially and artistically important films have received PG-13 and R ratings because they contain such depictions [of violence]," and that those filmmakers have the right to draw as much attention to their work as possible – "even the attention of persons under the age of 17, who are entitled to view such films with the permission and in the company of their parents."[71]

Although the motion picture industry does not have guidelines regarding ad placement, the major television networks and the theaters do have restrictions or guidelines about where and when film advertising is appropriate. Documents provided to the Commission suggest that almost all the major television networks have guidelines governing the airing of commercials for PG-13 and R films. In general, advertising for PG-13 films is evaluated on a case-by-case basis, depending on the content of the ad and the film. Half the networks have policies limiting the airing of ads for R-rated films (*e.g.*, to news and sports programs, or only after 9 or 10 p.m.); the others evaluate these ads on an individual basis.

For the major theater chains, the prevailing policy, either written or unwritten, is to limit trailer placement to feature presentations within one rating of the movie being promoted. That is, the policy allows trailers for R-rated movies to be placed with R and PG-13 features, and trailers for PG-13-rated movies to be placed with R, PG-13, and PG features.[72]

Still, as discussed in the next Section of this Report, the Commission found that neither the television networks' nor the theaters' placement restrictions are entirely effective in limiting children's exposure to advertising for movies generally rated for older audiences.

III. MARKETING MOVIES TO CHILDREN

A. Background

A central question the Commission was asked to address in this study is whether violent entertainment products are being marketed to children. With respect to the film industry, the answer is plainly "yes." The Commission's review indicates that motion picture studios routinely advertise movies rated R for violence to children under 17 and movies rated PG-13 for violence to children under 13.

The marketing of a motion picture begins long before the film is rated.[73] The studios exhibit rough cuts of the actual film as well as its core advertisements (trailers, TV commercials, and print ads) to test audiences, and conduct detailed research on many aspects of the film. Movie marketers choose audiences for these tests to meet defined demographics, including age parameters set by the studios. They conduct advertising research to measure the interest-generating potential of the advertisement, identify the moviegoers most attracted by the advertisements, and determine the messages conveyed.

Media advertising for a film also begins before the film is rated, or even completed. Six months to a year before a film opens, teaser trailers appear in theaters and on the Internet. Television commercials for summer releases may air during the Super Bowl in January. Newspaper and magazine advertising and outdoor banners also appear months before opening. Two to four weeks before a film opens, studios may launch a massive media blitz designed to saturate the marketplace. Because studio research suggests that most moviegoers learn about new films through television advertising, it is the most important aspect of many motion picture advertising campaigns.[74] The studios also use radio, print, outdoor advertising, the Internet, and promotional activities to generate interest in a film. During a campaign, studios receive industry-wide tracking reports – up to three times per week – measuring the campaign's success among various age groups, including children aged 12-17.[75]

B. Marketing R-Rated and PG-13-Rated Films to Children

As noted above, the motion picture industry's self-regulatory system does not restrict the placement of advertising materials for R and PG-13 films because the MPAA takes the view that children are appropriate targets for such films, so long as parental accompaniment or guidance is provided. The marketing documents reviewed by the Commission indicate extensive marketing – and, in many instances, explicit targeting – of violent R films to children under the age of 17 and of violent PG-13 films to children under 13.

Specifically, the documents show that 35 of the 44 R-rated films studied by the Commission, or 80%, were targeted to children under 17.[76] Media plans or promotional reports for 28 of those 44 films,[77] or 64%, contain express statements that the film's target audience included children under 17.[78] Marketing materials for seven other R-rated films also appeared to be targeting those under 17, though they did not expressly identify a target audience under 17. The plans for these seven films were either strikingly similar to the plans that did expressly target those under 17, or they detailed actions synonymous with targeting that age group *(e.g.*, advertising in high school newspapers or other publications with majority under-17 audiences, or otherwise promoting the films in high schools).[79]

Studio records also indicate that youngsters under the age of 17 were included in some marketing research activities. Thirty-three of the 44 R-rated films tested either a rough cut of the film or the film's advertising on an audience that included teens under 17.[80] Although most of this research was conducted on those 15 and older, research for eight R-rated films included 12-year-olds, and research for at least one other R-rated film was conducted on children as young as 10.[81]

Promoting violent PG-13-rated films to those under 13, while not as pervasive, is not unusual. Marketing materials for 20 films rated PG-13 for violence revealed that nine, or 45%, targeted children 11 and younger.[82]

1. Television advertising

R-rated films: Studio research shows that most moviegoers, and teens in particular, become aware of movies through television. Accordingly, studio media plans detail massive television campaigns. Of the 35 R-rated movies that targeted children under 17, studio media plans indicate that 26 designed at least part of their television campaign around a target audience including people aged 12 and above.

The studios repeatedly advertised films rated R for violence on television programs that were the highest rated among teens or where teens comprised the largest percentage of the audience.[83] The plans sometimes referred to these programs as "teen-oriented."[84] When studios targeted films to a particularly young audience, they increased significantly the frequency of advertising on those shows and excluded other programming.[85]

To reach teenage audiences more effectively, studios target advertising for certain times of day. Studio marketing materials indicate that the best way to reach younger viewers is to purchase advertising on local stations – a process referred to as "Spot TV buys" – on weekends, and during the "early fringe" and "prime access" hours, *i.e.*, after school and before prime-time network programming begins at 8 p.m.[86]

The studios advertised violent R-rated movies to children under 17 with cable television campaigns that were remarkably similar to each other. MTV, with its core demographic of 12-24,[87] was the largest advertising cable outlet for almost every motion picture the Commission examined, in terms of both the quantity of ads and the target audience reached. Indeed, the younger the target audience, the more the studios tended to advertise on MTV. For some of the movies targeting particularly young audiences, it was not uncommon for a studio to use MTV to achieve over 50% of its cable audience exposure.[88]

PG-13-rated films: Seven of the nine PG-13-rated films that were targeted to children 11 and younger were advertised on afternoon and Saturday morning cartoon programs. Marketing plans also included advertising on the Cartoon Network and Nickelodeon.[89]

An analysis of the television campaigns for PG-13 films targeting youngsters 6-11 indicates that many of the television programs popular with teens and used heavily to promote R-rated movies, also are very popular with children 6-11. As one marketing plan for a PG-13 movie targeting those 6-11 stated, "Other programs, such as *Buffy The Vampire Slayer*, *WWF* and *WCW Wrestling* cross over to Children 6-11 and local television buys targeted this group as well." This plan also showed that *Xena: Warrior Princess* – used in advertising for virtually every R-rated movie the Commission examined – was as popular with children 6-11 as it was with males 12-17. MTV is also popular with children 6-11.[90] Thus, although the Commission found little indication that R-rated films were deliberately being marketed to children under 12,[91] those young children nevertheless had substantial exposure to the television advertising for R-rated films as well.

2. Trailers

Trailers are a unique form of advertising. Trailer placement is governed by unwritten agreements between the studios and theaters through their principal trade associations. Studios do not pay the theaters to show their trailers. Completed features are sent to theaters with one trailer physically attached; other unattached trailers are sent to the theaters with a request that they be shown with a particular feature. The MPAA and NATO have agreed to limit trailer length and to require only that theaters play the attached trailer. Although unattached trailers are played at the discretion of the theater, the studios exert pressure on the theaters to adhere to their requests. Studios hire "trailer checkers" to verify that theaters are showing their trailers,[92] and theaters may be concerned that if they do not show the requested trailers, a studio might not book a future hit feature with them.

National Association
of Theatre Owners
4605 Lankershim Blvd., Ste. 340
North Hollywood, CA 91602
818.506.1778
www.hollywood.com/nato

In general, theaters do not show trailers for R- and PG-13-rated movies before children's animated features. In 1989, NATO passed a resolution stating: "All trailers shown with a 'G' rated film should be compatible therewith, and theatre owners should be especially sensitive to this situation to the end that the theatre going public will be entirely comfortable taking young children to view 'G' rated motion pictures."[93] NATO adopted this resolution due to complaints received from irate parents over the strong content of "all audience" trailers shown at films geared to young audiences. For this reason, the major theater chains (as discussed above in Section II.C.2) have adopted policies to limit trailer placement to within one rating of the feature presentation. The net effect of this trailer placement policy, however, is that previews for R-rated films are shown to audiences containing substantial numbers of youngsters under 17: trailer requests reviewed by the Commission show that the studios routinely seek to place trailers (both attached and unattached) for R-rated movies at PG-13-rated features, including those PG-13 features the Commission determined were marketed to children 11 and younger.[94]

In addition, the theaters appear to grant exceptions to the "within one rating" policy. For example, trailer check reports reviewed by the Commission show that *Star Wars Episode 1: The Phantom Menace*, rated PG, was regularly preceded by trailers for such films as *The General's Daughter* ("Rated R for graphic images relating to sexual violence including a strong rape scene, some perverse sexuality, nudity and language"), *South Park* ("Rated R for pervasive vulgar language and crude sexual humor, and for some violent images"), and *The Beach* ("Rated R for violence, some strong sexuality, language and drug content").[95]

3. Promotional and "street marketing"

The studios use a wide array of promotional activities to generate interest in a film. Although the majority of these activities are directed to a very broad audience, some are directed to children.

R-rated films: One of the most popular methods the studios used to attract teens to R-rated films was to distribute free passes to movie screenings and free merchandise related to the film (such as t-shirts, tatoos, and mini-posters) at places where teens congregate. As one marketing plan for an R-rated film stated:

> [O]ur goal was to find the elusive teen target audience and make sure everyone between the ages of 12-18 was exposed to the film. To do so, we went beyond the media partners by enlisting young, hip "Teen Street Teams" to distribute items at strategic teen "hangouts" such as malls, teen clothing stores, sporting events, Driver's Ed classes, arcades and numerous other locations.

Although only one studio described this promotional device in such direct terms, all the studios that provided details of their promotional activities used this tactic to attract teens.[96]

PG-13-rated films: Toys, children's clothing, and fast food appear to be the primary promotional methods for generating interest in PG-13 movies among children 11 and younger.[97] Three studios had licensing arrangements with toy and apparel companies for children's merchandise based on violent PG-13 films. Although these agreements are intended to generate their own revenue as well as to generate interest in seeing a film, the marketing materials reviewed by the Commission show they constitute an important facet of film promotion.[98]

4. Radio and print advertising

Radio advertising, although used less extensively than television, was an integral part of many advertising campaigns.[99] Marketing materials from five of the studios showed that radio was particularly useful in attracting audiences under 17.[100] The studios also used print advertising to target R-rated movies to teens. Magazines with majority under-17 audiences, such as *Teen*, *Jump*, *YM*, *DC Comics Teen*, or *Marvel Comics*, contained advertisements for numerous R-rated films.[101] In addition, six of the studios used print media distributed exclusively in schools – *Planet Report* and/or *Fast Times* – to advertise R-rated movies. *Planet Report* is published by a company that distributes posters and other promotional items to at least 8,000 schools, including high schools and elementary schools.[102] *Fast Times*, a news and entertainment magazine, is used as a high school teaching aid and often is assigned as mandatory reading to high school students.[103]

5. Internet marketing

The motion picture studios also promote their films by establishing an "official" Web site for each movie they release. Web sites generally have trailers for the movie available for downloading and viewing, as well as background information on the film's cast and creators. The studios include the address for the official movie site in virtually all print advertising and also place banner ads on other sites that link directly to the official site. For the R-rated films that targeted teens, the studios placed banner ads on sites with high teen usage.[104]

An important feature of the Internet is that it provides another outlet to show trailers for movies. Before widespread use of the Internet, trailers were limited to theaters. Now, trailers, in addition to being available on a movie's official site, also are available on numerous theater sites and through aggregator sites, many of which are independent from the studios and provide reviews and information about films.[105]

The proliferation of trailers online presents some obvious problems: "restricted trailers," those with content the MPAA has determined not to be acceptable for "all audiences," can easily be accessed by children under 17; in addition, the strong content contained in some "all audience" trailers is also accessible on the Internet by those under 17. The Commission's review found restricted trailers for *American Pie* and *Road Trip* posted on official Web sites that can be accessed as easily as "all audience" trailers by children under 17.[106]

C. Box Office Enforcement

As partners in the industry's self-regulatory system, movie theaters have urged the motion picture studios to include explanations for ratings in print advertising, and they also play a central role in trailer placement. Nevertheless, enforcement of the R rating category – ensuring that patrons under 17, without parental involvement, do not see R-rated films at theaters – remains the fundamental role of the theater.[107] In fulfilling this role, the theaters must strike a delicate balance between the need for enforcement (including the costs associated with measures beyond identification checks) and the need to maintain a friendly and welcoming environment.

FTC Mystery Shopper Survey
Movies
(395 Shoppers)

Was Rating Information Posted?	YES	54%
	NO	46%
Was Child Able to Make Purchase?	YES	46%
	NO	54%
Did Employee Ask Age?	YES	48%
	NO	52%

Despite the official policy that children under 17 should not be admitted to an R-rated movie unless accompanied by a parent or guardian, such children gain access in a variety of ways. They may purchase a ticket for the film themselves; have a sibling, friend, or stranger over the age of 17 purchase it for them; or, in a multi-theater complex, purchase a ticket to a PG-13- or lower-rated film and then, once past the ticket taker, go into the auditorium showing the R-rated picture. In a multiplex theater, meaningful enforcement of the age restrictions reflected in the MPAA ratings requires that attention be paid at two different places in the theater: the ticket window and the auditorium entrance.

Material from the eight largest domestic theater chains indicates that they have taken responsible measures to increase enforcement of the minimum age requirement for the purchase of tickets to R-rated features since the Columbine shootings. In a June 1999 public announcement with President Clinton, NATO promised stricter enforcement of the MPAA guidelines. Specifically, NATO announced that all its member theaters should require, at the box office, photo identification of unaccompanied young patrons seeking admission to R-rated films.[108]

Despite these enhanced efforts, an undercover shopper survey of 395 theaters conducted for the Commission in May through July 2000 found that just over half of the theaters enforced the age restrictions at the box office. Theaters refused to sell tickets to R-rated movies to unaccompanied 13- to 16-year-old children 54% of the time; youngsters successfully purchased those tickets 46% of the time. The same percentage of theaters that did not admit unaccompanied children (54%) also posted information about the rating system or theater enforcement policy. (See Appendix F for details of the "Mystery Shopper" survey.)

NATO has suggested several ways[109] theater chains might expand enforcement beyond box office identification checks: posting ushers to check for proof of age at the doors of features expected to attract a high proportion of teens; stamping the hands of patrons who have shown proof of age to the cashier, so they later can be checked for proof of age more easily; and, in multiplexes, when and where possible, showing similarly rated features in the same area of the complex.[110] The Commission's review indicates that, to date, the major theater chains have adopted very few of these suggestions. Four of the eight chains may require further proof of age by either the ticket taker or an usher posted at the auditorium entrance. The rest rely solely on the cashier. None of the theaters appears to have implemented NATO's other suggestions.

D. *Retailing of Movie Videos*

Children's access to violent movies on home video[111] differs according to whether the video is rented or purchased. Parents have significant controls over the videos their children rent because of limitations established by the major rental outlets. To be eligible for rental privileges, a customer of a video rental store usually must be 18 and have a credit card, making it difficult for children to rent videos independent of their parents' membership.[112] Blockbuster Video and Hollywood Video, the dominant home video membership stores, have responded to parental concerns by adopting policies that give parents the option to restrict the videos rented by their children. Under Blockbuster Video's policy, parents must affirmatively give their consent to their children's rental of R-rated movies.[113] Hollywood Video's policy is the opposite: parental consent to rent R-rated videos is presumed and parents must opt to place restrictions on the account.[114] Another large retail chain follows a discretionary policy: it gives individual stores autonomy in deciding whether to permit the rental of R-rated movies to minors.[115]

Although renting R-rated videos usually requires a degree of parental involvement, the direct purchase of such videos often does not. Home videos are sold at a wide variety of locations, ranging from specialized video stores and small convenience stores to large discount merchants, supermarkets, and the Internet. The Commission reviewed the policies of eight major retailers that sell home videos at traditional "bricks and mortar" stores. Only three of these informed the Commission that they have policies restricting the sale of R-rated videos to children under 17. These three retailers also rent videos, and thus may be more attuned to the issue of parental consent in this area.

All of the online retailers contacted by the Commission[116] provide MPAA ratings information.[117] However, these same retailers generally do not have express policies restricting the online sale of R-rated videos to children. One retailer stated that it relies on the purchaser's use of a credit card as a proxy for parental approval. The other retailers did not indicate whether they do so as well.

IV. THE MUSIC RECORDING INDUSTRY PARENTAL ADVISORY LABELING PROGRAM

> ***We believe that not all music is right for all ages and our Parental Advisory Label was created for just that reason. Parents can use the label to identify music that may not be appropriate for their children and make the choice about when – and whether – their children should be able to have that recording.***
>
> ***– Recording Industry Association of America***[118]

Recording Industry
Association of America
330 Connecticut Avenue N.W.
Suite 300
Washington, D.C. 20036
202.775.0101
www.riaa.org

The Recording Industry Association of America ("RIAA") created a parental advisory program in 1985 in response to concerns of parent groups about children's exposure to music with mature themes.[119] Under the program, music recordings that contain explicit lyrics, including strong language or graphic references to violence, sex, or drug use, are identified with a parental advisory label.[120]

The RIAA describes the parental advisory label as a tool for record companies to use to alert parents to explicit lyrics.[121] The decision to label a recording is made by individual record companies and their artists.[122] RIAA members, as well as non-member companies, use the advisory.[123]

A. Scope of Commission's Review

In examining the music recording industry's parental advisory labeling program, the Commission reviewed documents provided by the RIAA and the National Association of Recording Merchandisers ("NARM"), as well as publicly available materials. In addition, because each recording company labels its own explicit-content recordings, the Commission analyzed documents provided by the major recording companies – BMG Entertainment, EMI Recorded Music, North America, Sony Music Entertainment, Inc., Warner Music Group, Inc., and UMG Recordings, Inc. (Universal) – and their affiliated record companies (together "the recording companies") that explain their individual procedures for determining which recordings need to display the parental advisory label.[124]

**National Association
of Recording Merchandisers**
9 Eves Drive, Suite 120
Marlton, NJ 08053
856.596.2221
www.narm.com

In addition, the Commission studied the marketing plans, advertisements, and advertisement dissemination schedules for 55 full-length recordings with the parental advisory label, all of which were top sellers in 1999.[125] Because the recording companies could not specify which recordings received the parental advisory label due to violent content, as opposed to some other explicit content, these companies produced materials for top-selling recordings labeled for any reason due to their "explicit" content (which could include strong language and/or depictions of sex, violence, or substance use).[126] Also, because the RIAA's label makes no recommendations to parents about the age appropriateness of recordings with explicit lyrics, the Commission applied the age limit (17) of the movie and electronic game industry self-regulatory programs to its analysis of whether the recording industry is marketing explicit-content labeled recordings to children.[127]

B. Operation of the Music Recording Labeling Program

1. The labeling process

The parental advisory label is black and white, measures 1" x 5/8" and says "Parental Advisory, Explicit Content."

Unlike the film and electronic game self-regulatory systems, the recording industry labeling program does not have a rating board to determine which music recordings should display the parental advisory label. Nor does the RIAA provide standardized procedures or other guidance as to when a recording should display a parental advisory. Instead, the decision is made by each company for its own products. According to the RIAA, with about 60,000 recordings released each year, the artists and recording companies themselves can make the labeling decision most efficiently. In addition, the RIAA believes that because the parental advisory label is meant to flag for parents *any* potentially offensive material, it makes sense for a "sensitive and sophisticated" labeler at each company to make the labeling decision.[128] Therefore, to report on the labeling process, the Commission reviewed the practices of the five major recording companies.

According to the recording companies, the decision to label is subjective, and often made on a case-by-case basis.[129] None of the companies has adopted written policies or guidelines defining "explicit" content in music and none memorializes why a particular recording received the advisory.[130]

One company reported that its employees, often in partnership with the artists involved, make "good faith judgments about what kinds of lyrics and depictions parents might find offensive, because of racial epithets, vulgarities, curse words, sexual references, violence, and drug descriptions." Another company evaluates the content of every recording on the basis of various factors, including, but not limited to: explicit exhortations of sex, violence, illicit drug use, or suicide; exhortations of violence against any specific named real person or peace officer; offensive language generally and use of objectionable words; overall impression, including generally nihilistic world view, pervasive misogyny or racial/minority stereotyping. "The ultimate judgment call of whether the content of a recording warrants the [parental advisory label] is made in light of the message and identity of the artist, the current social climate, and, perhaps most importantly, straightforward common sense," the company said.

Documents from the three remaining companies suggest that they evaluate the content of a recording based on a cursory review of the lyrics. According to these companies, they may decide to label a recording as soon as they hear a number of expletives on one song, without listening to an album's entire content.[131] One company explained that because the RIAA system involves a single label, a more thorough analysis is unnecessary, and that "the process is not distinctly tailored to differentiate among 'violent content,' sex, language, or any other reason as the basis for stickering."[132]

If a company and/or an artist determines that a recording contains explicit content, the RIAA recommends using the label on the packaging of all cassettes, CDs, vinyl records, and music videotapes.[133] According to the RIAA, the label should measure 1" x 5/8" and should be part of the permanent packaging under the cellophane shrink wrap, rather than a peel-off sticker.[134]

2. The use of the advisory label on packaging

The Commission's review of the packaging of 55 top-selling CDs that bore the parental advisory label indicates that the recording companies do not uniformly follow the RIAA's suggestions for using the label.[135] In one company's case, 91% of the CD labels met the RIAA labeling parameters; in another company's case, none of the CDs – 0% – was labeled according to RIAA suggestions. The Commission noted the following:

- The advisory labels on 27 of the recordings (50%) met the RIAA recommendations for size, placement, and format.
- The labels on 41 of the recordings (75%) were incorporated directly into the CD packaging; the labels on the remaining 14 CDs (25%) were removable stickers attached to the CD case.

- A total of 10 of the removable stickers provided other information about popular songs on the CD in and around the advisory, tending to obscure the message on the advisory.
- Twenty-two of the advisories (39%) were smaller than the RIAA's recommended size.

In addition, a later review (July 2000) of the labels on 25 current top-selling labeled recordings also showed that the advisory often is smaller than the RIAA specifies or is a peel-off sticker.[136]

3. "Clean" versions

Although not specifically recommended by the RIAA, the recording companies routinely create and sell edited or "clean" versions of the explicit-content labeled recordings.[137] According to one recording company, an edited version "provides listeners with the option of purchasing an artist's work without the explicit content as identified by [the recording company and] . . . provides an alternative to retailers and other media outlets that opt not to sell, disseminate or promote the unedited versions of the stickered recordings."[138] Explicit or unedited versions of recordings usually outsell the edited version, often by over 10 times.[139]

In creating an edited version, one company states that it:

> often works closely with the artists to determine the necessary changes. In some recordings any explicit content is simply taken out, while in other instances new lyrics or sounds are added to replace those in the stickered version. These changes are made on a case by case basis with the focus centered on the deletion of any explicit content while making minimal changes to the artistic expression.[140]

The company further acknowledges that "there remain in the edited versions of the CDs identified . . . instances of language, situations, and phrases that reasonably might be considered 'violent' without distorting standard English usage." Its justification for leaving such lyrics in the edited version is "there is also in popular children's fare (cowboy adventures, military exploits, fairy tales, cartoons, etc.) a great deal that is similarly 'violent,' but for which no one would advocate special labeling or warning."[141]

Creating an edited version is not always feasible, however. According to one company, if the controversial content is essential to the artist's message, the recording company may not release an edited version. The decision to create an edited version, this company said, also "may turn on the practical consequences of editing. . . .[A]n edited version may not be produced if the editing process would eliminate the preponderance of the lyrics."[142]

Although the lyrics on the two versions may vary, the CD packaging often does not, except that the explicit version bears the parental advisory label. When the CD packaging itself contains "explicit content," the artwork used for the explicit and edited versions may differ.[143] Similarly, when the packaging for both versions lists the songs, the edited versions often replace any profanity in song titles with asterisks.

C. Issues Not Addressed by the Music Recording Labeling Program

1. Access to important information about explicit recordings

The parental advisory label covers a wide range of content, including violence, sex, and/or drug use, without regard to the fact that some parents may be more concerned with certain types of explicit content than with others. Although the RIAA agrees that parents need information about recordings to be able to make intelligent listening choices for their children,[144] groups such as the American Academy of Pediatrics and the National Parent Teacher Association have expressed concern that the industry's "one-size-fits-all" approach does not provide enough information to parents.[145]

Unlike the motion picture and electronic game rating systems, the label does not provide reasons for the advisory label or "content descriptors" indicating the nature or the amount of the explicit content (*e.g.*, strong language or graphic references to violence, sex, or drug use).[146] Instead, one advisory covers a broad spectrum of content, including violence and/or sex.

Nor does the label specify the age groups for which an explicit-content labeled recording may be inappropriate;[147] parents of a 7-year-old are given the same advisory as parents of a 12-year-old or a 16-year-old.[148] Further, the industry does not provide a means for parents to obtain the lyrics of explicit-content labeled recordings. In fact, the Commission found that out of the 55 labeled CDs that it reviewed, only eight included lyrics for the songs in the packaging. Parental review of a recording may be hindered because the lyrics on many explicit songs are difficult to understand without repeated listening.[149]

Focus groups conducted for the RIAA indicate that parents want a "visible and credible voluntary labeling program that helps them monitor the music their children purchase."[150] Consumer survey evidence suggests that the current labeling program may not provide parents with enough information about violent lyrics to help them make decisions about their children's listening choices. In a survey conducted for the Commission in May and June 2000, fewer than half of the parents (44%) surveyed viewed the parental advisory as "excellent" (12%) or "good" (32%) at informing them about the level of violence in music.[151] And although 74% of parents surveyed reported being "very satisfied" or "somewhat satisfied" with the parental advisory label, only 9% of parents who restrict their children's music mentioned the advisory label when asked how they decide what music their children can listen to. Of the overall sample of parents, 45% use the advisory program at least some of the time.[152] According to a June 1999 Gallup poll, 74% of the respondents thought that music producers do not provide enough information about the violent content in lyrics of popular music for adults to make decisions about what is appropriate for children; 22% thought that the information was enough.[153] The same poll found that 73% of parents believed that the music industry should place restrictions on the sale of recordings with violent content to children under 18, as well as provide information to the public about the violent content of recordings.[154]

Parents' Responses - Music	
Who selects the product?	
An adult	11%
An adult and the child together	55%
The child	34%
Who purchases the product?	
An adult	34%
An adult and the child together	37%
The child	28%
Parent restricts child's use of the product	72%
Parent is aware of a rating system for the product	77%
How often do you use the rating system?	
Some, most, or all of the time	62%
Rarely or never	38%
Are you satisfied with the rating system?	
Somewhat or very satisfied	74%
Somewhat or very dissatisfied	14%
How does the rating system do in informing you about violence?	
Good or excellent	44%
Fair or poor	40%

2. The placement of an advisory on digital music

The current labeling program encourages an advisory on explicit music sold in CD, cassette, or album formats, but not on explicit music that is downloaded electronically and stored as a computer file (*e.g.*, an MP3 file).[155] Internet technology is making music available to a broad audience,[156] and studies show that listening to and obtaining music in a digital format is increasingly popular with teenagers.[157] The recording companies have begun to address the growing availability of digital music and to create their own systems of digital music distribution.[158] However, no parental advisory labeling program exists for digital music.

3. Advertising disclosure and placement standards

The RIAA has stated that the explicit content label is a tool designed "to provide a clear notice to parents to allow them to decide . . . what may or may not be appropriate music for their children."[159] As noted above, the RIAA program's single element has been a point-of-purchase disclosure on the packaging of a CD, cassette, or album (see next section for recently-announced changes).[160] The labeling program has not addressed the advertising of explicit recordings, either in terms of whether the advisory label should appear in advertising or whether the recording companies should limit where they place ads for labeled recordings.[161]

The Commission's review of the music advertising submitted by the recording companies and by eight major music retailers shows that, while some ads for explicit recordings display the advisory, many do not.[162] Moreover, when the label appears in advertising, it often is a black and white blur that is too small for consumers to read, or is obscured by pricing information.

A separate review of recent issues of magazines popular with teens shows that advertisements for explicit-content labeled recordings rarely display the parental advisory: only 18 (8%) of 234 print ads for labeled recordings displayed the advisory.[163] Similarly, a review of artist, recording company, and music retailer Web sites shows that many of the online promotions for explicit recordings omit the parental advisory.[164]

There are a few notable exceptions, however. Some recording company and retailer Web sites tell consumers about the explicit content of the recordings they are selling through text disclosures near the promotions. For example, Cash Money Records uses clear text disclosures – "Explicit Version" and "Clean Version" – directly below pictures of the individual recordings.[165] Similarly, Amazon.com regularly includes the warning "EXPLICIT LYRICS" on its Web pages and in its print advertising.[166] This advisory text is often presented in a large, easy-to-read notice. CDNow.com and TWEC.com also place the term "explicit" next to promotions for labeled albums and the term "edited" next to promotions for edited albums.[167]

However, because most advertisements for labeled recordings do not show the advisory label, parents may not have the notice they need to decide what music is appropriate for their children to purchase. Most teens and many pre-teens make music purchase decisions without consulting their parents;[168] therefore, advertisements may be parents' only advance source of information regarding the music their children are purchasing.

Finally, it appears that the utility of the advisory label as an effective notice to parents has been diminished by the industry's lack of guidance on the marketing of explicit-content labeled music recordings to children. Section V of this Report discusses the efforts marketers have made to reach children directly and to influence their purchases regardless of the parental advisory label.

D. Recent Changes to the Music Recording Labeling Program

In late August 2000, the RIAA recommended revisions to the parental advisory label program, to be effective October 1, 2000. According to the recommendation, the RIAA now asks that industry members: 1) use general guidelines, included in the RIAA memorandum, to determine whether a recording warrants a parental advisory label; 2) adopt a policy that the parental advisory label or other prominent notice of explicit content should appear in print advertising for explicit-labeled recordings and that advertising for explicit-content labeled recordings should not appear in publications, Web sites, or other commercial outlets whose primary (*i.e.*, 50% or more) market demographic is 16 years of age or younger; and 3) adopt a policy that the parental advisory label should appear prominently in online retail sites in all stages of the transaction and that online retail sites should link to the entertainment industry's Web site, www.parentalguide.org, where more information on the rating and labeling systems may be found. Further, the RIAA committed to conducting an annual review of its policies and their implementation. These are constructive changes that begin to address several of the concerns outlined above; whether and how they will be implemented is not yet known. This Report's analysis of the music recording industry's self-regulatory program is based on the program in effect up until September 2000.

V. MARKETING MUSIC RECORDINGS TO CHILDREN

A. Background

Information submitted by the recording companies shows that they market their explicit-content labeled recordings at two levels. First, they advertise and market their recordings directly, assuming responsibility for the design of the materials and the dissemination of the promotions in a variety of venues, including print, broadcast and cable television, in-store displays, radio airplay, music videos, "street marketing," artist appearances on cable music television programming, and contests on Internet Web sites. Second, they promote music recordings through cooperative advertising agreements with retailers, wholesalers, and other distributors of music.[169] Marketing efforts often begin several weeks before the release of a recording and can continue long after.

B. Marketing Explicit Content Recordings to Children

The Commission's review of marketing documents indicates that the recording companies often market explicit-content labeled recordings to a wide demographic, including a significant under-17 audience. Fifteen of the 55 marketing plans (27%) the Commission studied expressly identified teenagers as part of the group to which the companies planned on marketing the explicit recordings. Examples of express statements regarding the recordings' target audience include:

> "Target audience: Hip-Hop, Crossover, Pop, Male/Female – 14-34"
> "Target audience: Alternative/urban, rock, pop, hardcore 12-34"
> "target demographic are 15-30 males and females of various ethnic backgrounds who are into hip hop."
> "the 13-35 year old male demographic; which as we know is our target demo."

Others more generally discuss promoting explicit recordings to "teens" and distributing materials at high schools or in popular teen venues.[170]

Although the marketing documents for the remaining 40 explicit-content labeled recordings did not expressly set forth the age of the target audience,[171] they detailed the same methods of marketing as the plans that specifically identified teens as a part of their target audience, including placing advertising in media that would reach a majority or substantial percentage of children under 17.

1. Print advertising

The recording companies routinely use print advertising to promote their explicit-content labeled recordings to children under 17. The marketing materials for 39 out of 55 labeled recordings (70%) discussed placing ads in magazines with a ***majority*** or ***significant*** teen audience (such as *Blaze*, *GamePro*, *Metal Edge*, *Right On!*, *Seventeen*, *Skateboarding*, *Thrasher*, *Vibe*, and *YM*).[172] These magazines have an under-18 readership of between 40 and 80%.[173]

The recording companies also encouraged and closely tracked the placement in these publications of feature stories about their artists who had released explicit-content labeled recordings. The marketing plans for 11 explicit-content labeled recordings indicated that such features were scheduled to run in publications with a majority or substantial teen audience.

In addition, the Commission reviewed the music advertising in recent issues of nine magazines with a majority or substantial teen readership audience and found ads for explicit-content labeled recordings in each magazine.[174]

2. Television promotions – cable music channels

Television cable channels that show music videos and other music-related programming figure prominently in the marketing of explicit-content labeled recordings to children under 17. The marketing plans almost uniformly discuss airing music videos and placing advertisements and promotions on three music cable channels – MTV, BET, and/or The Box – all of which target and reach viewers between the ages of 12 and 34.[175]

The recording companies' marketing materials show that these companies often:

- advertise the release of labeled recordings during cable music programming;
- submit for airplay music videos of songs that appear on labeled recordings;
- encourage appearances by the artist on cable music programs; and
- arrange promotional activities with cable music channels, such as contests and special features on the artist.[176]

In addition, many of the marketing documents discuss securing promotions on specific cable music programs that appear during popular after-school and early-prime-time shows, such as MTV's *Total Request Live* and *Jams Countdown* and BET's *Rap City*. A review of these cable programs confirms that advertisements for labeled recordings, and music videos for songs from these recordings, appear on these channels during after-school and prime-time hours.[177]

3. Other television advertisements

The marketing materials for the music recordings placed significantly less emphasis on network and non-music cable television advertising than did the plans for motion pictures.

Nonetheless, several of the marketing plans indicated that the recording companies intended to advertise and promote explicit-content labeled recordings on television programs with large under-17 audiences, such as *The Simpsons*, *South Park*, *Buffy the Vampire Slayer*, and various wrestling programs.[178]

4. Internet marketing

The Commission found that Internet advertising and promotion is an integral part of most of the marketing plans for explicit recordings. There is every indication that the companies will continue to increase their marketing of labeled recordings over the Internet: as one marketing plan noted, "Internet marketing and promotions is the wave of the future." Such marketing efforts easily reach a young audience,[179] and surveys of teens indicate that a significant percentage of children are listening to music on and obtaining music from Internet Web sites.[180]

Promoting a labeled recording over the Internet usually involves setting up an artist Web site or Web page (as part of a recording company site) where consumers can listen to short samples of songs (audio clips) from explicit recordings.[181] These sites link to others, including artists' sites, and recording company and retail sites, from which recordings can be previewed, ordered, or downloaded. The recording companies also promote explicit-content labeled recordings through popular music sites, including mtv.com, bet.com, launch.com, and ubl.com. Several of the marketing plans for labeled recordings also detailed their use of electronic mail to alert fans about upcoming releases. Children under 17 constitute a significant percentage of the audience on these music Web sites.[182]

5. Street marketing

Most of the marketing materials the Commission examined included plans to promote explicit-content labeled recordings through the use of aggressive "street marketing campaigns."[183] The companies use "street teams" to distribute a variety of promotional materials at non-traditional venues such as concerts, sporting goods stores, street fairs, and trendy clothing stores. The promotional materials involved include "coming soon" banners, posters, postcards, window displays, flyers, cassette and CD samplers, locker posters, key chains, t-shirts, hats, pencils, baseball cards, CDs, and "scratch and win" promotions.

Street marketing efforts also include outdoor advertising for labeled recordings on billboards, posters at bus shelters, bus stop benches, buildings, and street poles. Several plans discussed attaching promotions for the labeled recordings to public buses, ice cream trucks, and shuttle vans that drive through urban neighborhoods.

In efforts geared specifically to the under-17 audience, several plans discussed distributing promotional materials for, and playing music and music videos from, explicit recordings in sporting goods and apparel stores popular with teens, such as Foot Action and Downtown Locker Room.[184] One plan also discussed distributing singles from a labeled recording for play at "Back To High School" parties.

6. Radio

Radio is an important medium for reaching the youth market. Many of the marketing documents the Commission reviewed described plans to seek heavy radio play of singles from explicit-content labeled recordings on radio stations with a primary audience of 12- to 24-year-olds. These documents emphasized placings ads and other promotions, such as concert ticket giveaways, album giveaways, and a variety of prize promotion contests, on these stations. In addition, several of the marketing plans provided for on-air artist interviews on these stations.

7. Licensing

Like the motion picture and electronic game companies, the recording companies often cross-market their products through licensing agreements. The companies agree to the use of songs from explicit-content labeled recordings in other products marketed to teens, such as movies, video games, and television programs. Several companies licensed songs from labeled albums for use in R-rated movies that the movie studios promoted to an audience of 12- to 17-year-olds. One company licensed music from explicit-labeled recordings for use in PG and PG-13 movies.

The recording companies also licensed music from explicit-content labeled recordings for use in electronic games. One company licensed music from labeled recordings for use on a "fighting" game rated M ("Mature" audiences) that marketing documents indicated was targeted to 12- to 24-year-olds. Two companies approved the use of music from explicit-content labeled recordings on E-rated ("Everyone") video games. Further, the companies provided agreements authorizing the use of music from labeled recordings in programs and networks popular with teens. One marketing plan detailed a cross-marketing effort involving a contest with a clothing company whose products are "targeted to men and women 12-24," and also discussed using the contest as a means to "gather tens of thousands of e-mail addresses."

C. Retailing of Music Recordings

Recordings with an explicit content label are sold at specialty music stores, large electronics retailers, department stores, and on the Internet, among other locations. The eight music retailers the Commission contacted take a variety of approaches toward selling labeled recordings.[185] Of the six of these music retailers with "bricks and mortar" stores:

- Two have company-wide policies restricting the purchase of labeled recordings in their retail stores by the age of the purchaser. One has a written policy not to sell any labeled CDs to "children," which some individual stores within the chain define as anyone age 17 and under. The other said its policy is not to sell recordings that display the advisory label to anyone under 13 years of age without a parent or guardian present.
- Three do not place any restrictions on in-store purchases of explicit recordings by children of any age.
- One does not carry recordings with a parental advisory label in its stores, stocking *only* the edited versions of these recordings.

Seven of the eight retailers contacted by the Commission sell explicit music on their Web sites; none imposes any age restrictions on online purchasers of explicit music.

The undercover shopper study conducted for the Commission confirms that retail stores rarely restrict children from purchasing explicit-labeled music. In that survey of 383 music stores, unaccompanied children ages 13-16 were able to buy an explicit-content labeled recording 85% of the time.[186] Moreover, only about 12% of the music stores posted information about the parental advisory system or about the store's sales policy regarding explicit-content labeled recordings.[187]

FTC Mystery Shopper Survey
Music
(383 Shoppers)

Was Rating Information Posted?	YES	12%
	NO	88%
Was Child Able to Make Purchase?	YES	85%
	NO	15%
Did Employee Ask Age?	YES	16%
	NO	84%

VI. THE ELECTRONIC GAME INDUSTRY SELF-REGULATORY SYSTEM

> *The ESRB rating system is unique because it provides information about both age-appropriateness AND content elements that may be of interest or concern. The ratings and content descriptors are designed to help parents exercise control over the computer and video games their children play.*
>
> *– Entertainment Software Rating Board*[188]

Beginning in the early 1990's, Congress responded to concern about the violent content in some electronic games with hearings and legislative proposals. Although no legislation was enacted, several members of Congress were critical of the electronic game industry for its lack of a self-regulatory system to rate electronic games.[189] In 1994, industry members formed the Interactive Digital Software Association ("IDSA") to address this criticism.[190] The IDSA, in turn, created and funded a separate division, the Entertainment Software Rating Board ("ESRB"), to develop an interactive software rating system to assist parents in their efforts to select appropriate games for their children.[191]

The Interactive Digital
Software Association
1211 Connecticut Ave., NW,
#600
Washington, D.C. 20036
202.223.2400
www.idsa.com

The IDSA/ESRB system rates game software published for all gaming platforms, including cartridge-based and CD-based console systems (such as the Nintendo 64, the Sega Dreamcast, and the Sony Playstation, which hook up to a television set) and personal computer-based systems (such as a Windows-based PC or a Macintosh). The ESRB's rating symbol can be found on all console-based video games and on nearly all personal computer software games.[192]

The electronic game industry's self-regulatory system is the most comprehensive of the three industry systems studied by the Commission. It is widely used by industry members and has been revised repeatedly to address new challenges, developments, and concerns regarding the practices of its members. Its requirements are set out in the IDSA's *Advertising Code of Conduct* ("Adcode"), first adopted in 1995, and in the ESRB's *Principles and Guidelines for Responsible Advertising Practices* ("Ad Principles"), which became effective in January 2000.[193]

A. Scope of Commission's Review

To evaluate the electronic game industry's self-regulatory system, the Commission obtained information from the IDSA and the ESRB concerning the development and enforcement of the self-regulatory mechanisms they established for industry members. To assess industry members' use of those self-regulatory mechanisms, the Commission contacted 11 video and personal computer game publishers and obtained marketing and media plans for over 200 games[194] that the ESRB had rated as containing violent content, including plans for most of the best-selling Mature-rated games from the last three years.[195]

B. Operation of the Electronic Game Self-Regulatory System

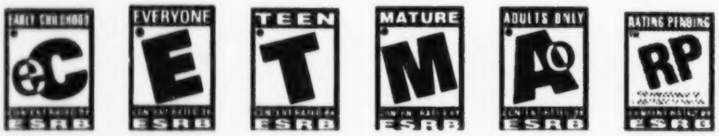
1. The rating process

Entertainment Software
Rating Board
845 Third Avenue
New York, NY, 10022
212.759.0700
www.esrb.org

According to the ESRB, each electronic game title is rated by three people who have no ties to industry and whose identities remain anonymous to industry members. The rating panel for any given game title is selected from a pool of more than 200 individuals with different demographic characteristics; members of the pool vary by gender, ethnicity, age, and marital and parental status.[196] Each three-member panel rates a game based on materials submitted by the game publisher or developer, typically videotaped footage of the most extreme portions of the game.[197] During this review, each rater records every instance in which he or she observes a segment of gameplay that qualifies under a particular content rating category. When at least two of the three raters apply the same rating category to the same segment of the game, that rating category becomes the consensus rating for the game.[198]

The IDSA/ESRB system rates game titles according to five age-based categories: (1) Early Childhood, or "EC"; (2) Everyone, or "E";[199] (3) Teen, or "T"; (4) Mature, or "M"; and (5) Adults Only, or "AO."[200] By definition, game titles rated M contain content suitable only for persons ages 17 and older, and T-rated titles contain content suitable only for persons ages 13 and older. There is also a Rating Pending category ("RP") to indicate that a game has been submitted to, but not yet rated by, the ESRB.[201] According to the ESRB, nearly 75% of games have been rated either EC or E, while 19% have a T rating, 7% have an M rating, and less than 1% have an AO rating.[202]

The current rating icons appear as follows:[203]



As in the motion picture rating system, a descriptive phrase may be assigned to the letter rating to indicate content that might be of concern to parents, such as language, sexual themes, or violence.[204] Descriptors reflecting violent content include "Mild Animated Violence,"[205] "Mild Realistic Violence,"[206] "Comic Mischief,"[207] "Animated Violence,"[208] "Realistic Violence,"[209] "Animated Blood and Gore,"[210] "Realistic Blood and Gore,"[211] "Animated Blood,"[212] and "Realistic Blood."[213]

The clear majority of games, such as sports and racing games or strategy and puzzle games, do not contain graphic violence or depict blood and gore. Yet hundreds of games do, and, due to technological advances,[214] it is now possible for the maiming and killing depicted in those games to be inflicted with a vast array of weaponry and illustrated in graphic, near lifelike detail.[215] The descriptors, however, do not indicate the intensity of violence in a game. All the violence descriptors but two – "Animated Blood and Gore" and "Realistic Blood and Gore" – may appear in E-rated games. Games rated T, M, or AO may be assigned any of the violence descriptors. Although the M-rating may suggest a greater level of violence compared to T- and E-rated games, the particular game may have received the M-rating for content other than violence (*e.g.*, strong sexual content).[216] Thus, although the descriptors, when combined with the ratings, do provide parents with information that is helpful in making decisions as to what is appropriate for their children,[217] the degree of violence may not always be apparent.[218]

2. Requirements for packaging, advertising, and marketing

a. Disclosure of rating information on product packaging and in advertising

Unlike the film and music industries, the electronic game industry requires the display of rating icons and, in most cases, content descriptors (*e.g.*, "Realistic Blood and Gore") on packaging, in print ads, and online. It also requires television ads to include a voice-over stating the game's rating. Specific requirements include:

- display of the rating icon on the front of the package and any content descriptors on the back;
- display of the rating icon on all game cartridges, compact discs, and floppy disks;
- display of the rating icon *and* content descriptors[219] in print advertisements;
- display of the rating icon *and* a voice-over[220] of the rating in televison ads; and

- display of the rating icon on game Web sites and on pages where a game "demo" (an abbreviated version of the game) or trailer is accessed, and display of the rating icon *and* content descriptors on product ordering pages.

Although the Adcode expressly includes banner ads[221] on Web sites within its very broad definition of online advertising, it does not require that banner ads contain either rating icons or content descriptors. Nor does the IDSA Adcode cover ads for products related to electronic games, such as action figures or other products licensed by game manufacturers.

The Commission reviewed product packaging, recent print and television advertising, and industry Web sites promoting particular games to assess industry compliance with the disclosure requirements. This review, described in Appendix J (*Electronic Game Industry Compliance with Self Regulatory Code Requirements to Disclose Ratings Information on Product Packaging, in Advertising, and Online*), found a high level of compliance with the packaging requirements and with requirements concerning proper visual disclosure of the rating and voice-overs of rating information in television ads. Industry compliance was mixed, however, with respect to the requirement to display ratings and content descriptors in print advertising,[222] although it appears that compliance levels are improving. Compliance with the rating disclosure requirements for industry Web sites was poor. Although most sites complied with the basic requirement to display the ESRB rating, many failed to display the rating icon on pages where a demo could be downloaded or viewed, and only a few displayed required descriptors at the point where one could order a game.

To its credit, the IDSA has taken several steps to encourage industry members to comply with these requirements. It has contacted many individual game publishers regarding their noncompliance with the rating display requirements for packaging, print, and television advertising.[223] For packaging violations, the IDSA has asked the violator to place a hold on any future shipments of games with noncompliant packaging and to distribute stickers containing the correct rating information for retailers to apply on any packaging already in stores.[224] For advertising violations, the IDSA has generally asked the publisher to avoid future noncompliance. None of the documents submitted to the Commission revealed an instance when a violation resulted in a fine or a revocation of the ESRB rating, which the IDSA has the power to seek.[225]

Even though most advertisements and packaging comply with the requirements to display rating information, consumer familiarity with and usage of the IDSA/ESRB system appear to be low. According to the Commission's May-June 2000 survey of parents and children, 61% of parents were aware of a rating system for video games, but only 37% had both heard of and had more than slight familiarity with the rating system.[226] A bare majority of parents who claimed to be aware of and at least slightly familiar with the rating system said they use the rating at least some of the time when their children want to play a video game.[227] However, just over half of those parents could correctly state that the rating system provides for both age-based ratings and content descriptors, and less than half could name a single one of the ESRB ratings unaided or distinguish the ESRB ratings from rating terminology used in the music or motion picture industries.[228]

Other studies have demonstrated similarly low levels of familiarity and use. An ESRB-sponsored survey of parents in 1999 found that 45% were aware of the electronic game rating system, in contrast with 94% of respondents for the movie rating system and 60% for the music labeling system.[229] A 1999 survey commissioned by the Kaiser Family Foundation found that about 53% of parents reported using ratings on electronic games.[230] A smaller survey conducted by the National Institute on Media and the Family in 1998 suggested a lower level of use, finding that 40% of parents routinely looked at industry ratings before buying or renting computer or video games.[231]

At the same time, the game rating system appears to be helpful to those parents who actually use it. The Commission's study found that five in six of those parents who use the video game rating system at least some of the time when their children want to play a game were "very satisfied" or "somewhat satisfied" with the rating system.[232] Similarly, the *Kaiser Survey* reported that about 86% of parents who had used the rating system found it to be "very useful" or "somewhat useful."[233] Eighty percent of respondents in the ESRB survey who had the components of the IDSA/ESRB system described to them found the system "very helpful" or "somewhat helpful."[234]

As to violence, the Commission's survey found that a majority of parents who are at least slightly familiar with the system believe that the rating system does either an excellent (4%) or good (50%) job of informing parents about the level of violence in video games.[235] In contrast, a Gallup poll conducted in June 1999 reported that 74% of respondents felt that the electronic game industry did not provide parents with enough information about violent content to make decisions about what is appropriate for children, while 20% believed that the information was sufficient.[236] However, respondents in that poll apparently were not screened for experience with the system.

Parents' Responses - Games	
Who selects the product?	
An adult	17%
An adult and the child together	53%
The child	29%
Who purchases the product?	
An adult	38%
An adult and the child together	45%
The child	15%
Parent restricts child's use of the product	68%
Parent is aware of a rating system for the product	61%
How often do you use the rating system?	
Some, most, or all of the time	52%
Rarely or never	45%
Are you satisfied with the rating system?	
Somewhat or very satisfied	77%
Somewhat or very dissatisfied	9%
How does the rating system do in informing you about violence?	
Good or excellent	55%
Fair or poor	29%

b. Limits on violent content in advertising

The IDSA/ESRB system also governs the content of advertising. In the fall of 1999, the IDSA created the Advertising Review Council ("ARC") as a separate division of the ESRB.[237] In addition to being given responsibility to enforce the Adcode, as of January 31, 2000, ARC became responsible for implementing, administering, and enforcing an expanded set of

Principles and Guidelines for Responsible Advertising Practices ("Ad Principles"), which add new requirements beyond the Adcode to assist companies in providing for "responsible, appropriate, truthful and accurate advertising."[238] Companies that receive an ESRB rating agree to comply with the Ad Principles and to cooperate with all of ARC's reviews, investigations, and inquiries.[239]

The IDSA charged ARC with ensuring that industry ads comply with the following four principles. An advertisement should:

- accurately reflect the nature and content of the game and the rating issued;
- not glamorize or exploit the ESRB rating;[240]
- be created with a sense of responsibility towards the public; and
- not contain any content that may cause serious or widespread offense to the average consumer.[241]

With regard to the violent content of ads, ARC will examine, among other things, whether ad copy includes graphic and/or excessive depictions of violence.[242]

Because the Ad Principles only recently took effect, ARC's initial efforts to foster compliance have focused principally on educating members about their requirements.[243] Nonetheless, the Commission's review of recent ads in game enthusiast magazines shows several instances of ad copy for M-rated games that might be covered by these Principles, such as an ad that states, "the huge 15 foot genetically engineered Behemoth rips the cop's heart out and like a rag doll tosses his lifeless body across the room" or an ad that promises "more powerful weapons" and urges gamers to "exercise your trigger finger."[244] It is not clear whether ARC or the IDSA would consider these examples to violate the letter or spirit of the Ad Principles.

ARC officials expect that compliance with the Ad Principles will be enhanced by the decision of leading game enthusiast magazine publishers to incorporate the Ad Principles into their ad acceptance practices.[245] It remains to be seen, however, whether the game magazines will be effective in screening out excessive violence from game ads. In answering a recent letter from a young reader upset that his parents would not let him buy Resident Evil (an M-rated game with violence descriptors), the editor for one of the most popular game magazines responded as follows:

> We all know that Resident Evil is gory and violent; in fact, the series is rated "Mature" by the ESRB – that means appropriate only for gamers 17 and older . . . end of story. The fact that you own Turok and Quake [both M-rated games with violence descriptors], but are not allowed to play Resident Evil, indicates that your parents are somewhat befuddled by video games. . . . Most parents are simply protective of their kids, however, and yours are probably making a decision with your best interests in mind. Why not find a pal who has Res Evil and enjoy the classic series that way?[246]

c. Limits on marketing to minors

Unlike the movie and music recording industries, the electronic game industry does prohibit marketing targeted to children under the age suggested in the game's rating. Since 1995, the IDSA Adcode has barred industry members from "specifically target(ing) advertising . . . for entertainment software products rated Teen, Mature, or Adults Only to consumers for whom the product is not rated as appropriate."[247] According to the IDSA, this provision is intended to prohibit a company from advertising a game rated Teen or Mature in, for example, the Barbie Magazine.[248] In a 1998 letter, the IDSA emphasized that the "anti-targeting provision is important to the integrity of the rating system and is meant to ensure that young people are not encouraged to play games that are not suitable for them."[249] As discussed in the next Section of this Report, however, nearly all the industry members contacted by the Commission appear to have targeted their marketing to audiences that include a high percentage of children for whom the products are rated as not suitable.

VII. MARKETING ELECTRONIC GAMES TO CHILDREN

A. Background

Publishers of electronic games rely heavily on print advertising, especially in gaming enthusiast magazines, and make frequent use of Internet and television advertising to promote new game titles.[250] Other promotional tactics used by one or more industry members include: in-store displays at major game and toy retailers;[251] the giveaway of sampler or "demo" disks of the game in popular gaming magazines; the aggressive solicitation of online and print press coverage, particularly for previews, reviews, and magazine covers; the creation of "official" Web sites or Web pages for a game title where browsers can learn about the game, view game clips, or download an abbreviated version of the game;[252] the encouragement of electronic chat about the game on the Internet;[253] direct mail and e-mail solicitations; "street marketing" (the distribution of posters, flyers, and stickers at clubs, music shops, and skateboard shops); the giveaway of game-related paraphernalia, such as sunglasses, stickers, t-shirts, and key chains; and game giveaways over the radio.

B. Marketing M-Rated Games to Children

The Commission's review of industry documents indicates that nearly all the game companies contacted have marketed violent M-rated games to children in violation of the IDSA's anti-targeting provision. These violations are evidenced foremost by marketing documents for M-rated games that expressly target children (typically boys) under age 17. This under-17 targeting occurred as late as February 2000, the cut-off date for Commission-requested materials.

The marketing documents provided to the Commission indicate that at least 83 of the 118 violent M-rated games studied (70%) were targeted to children under 17. Sixty of the 118 game titles (51%) had at least one plan that expressly included children under 17 in the game's target audience.[254] The incidence of express targeting was much higher for console games (72%) than for personal computer games (26%).[255] Marketing documents for 23 other M-rated games, though they did not expressly identify children under 17 as the target audience, included plans to advertise the games in magazines or on television shows with a majority or substantial under-17 audience,[256] strongly suggesting that children under 17 were being targeted.

Overall, 10 of the 11 companies contacted by the Commission (91%) produced at least one marketing document expressly identifying males (denoted by the letter "M")[257] under 17 as the core, primary, or secondary target of their advertising campaigns for a violent M-rated game.[258] In nearly all these instances, males over age 17 were also part of the target audience. Most of the plans targeting an under-17 audience set age 12 as the younger end of the target spectrum, *e.g.*, "M 12-17" or "M 12-24,"[259] but two targeted children as young as six and eight.

In several instances, company marketing documents contained inconsistent statements on whether the game's target audience included children under age 17. For example, a 1999 creative brief for a violent M-rated game stated, "The ad campaign MUST be targeted to people over the age of 17. . . . No GUNS or BLOOD should appear anywhere in the ads. . . . Rating icon to be prominent in all ads." At the same time, the marketing and media plans for the game expressly targeted a 12- to 17-year-old audience and planned advertisements in magazines and during television shows highly popular with younger teens.

Further, while some marketing plans indicated an intent to market M-rated games to an older audience,[260] others targeted under-17 consumers while simultaneously acknowledging that this practice might conflict with the game's M rating. For example, a 1997 plan stated, in part:

> Although Nintendo 64 purchasers space a large range in terms of age (6-34 years old), we recommend approaching the middle segment of this group because: [The game] has an M rating, which 1) may discourage parents from buying the game, and 2) hinder clearance of a commercial airing in shows primarily for children under 12. However, the younger the audience, the more likely they are to be influenced by TV advertising . . . . Therefore, the recommended media target audience is: Males 12-17 – Primary Males 18-34 – Secondary.

In addition, two plans for games developed in 1998 described the target market as "Males 17-34 due to M rating (the true target is males 12-34) who own, or plan to own a PSX machine," and "Target: Males 17-34 due to M rating (the true target is M9-34) who own or plan to buy an N64 machine."[261]

Aside from express statements targeting an under-17 audience, the marketing documents show plans[262] to place advertisements for M-rated games: 1) in magazines with a majority or close to a majority under-17 audience; 2) on the television shows most popular with younger teens; and 3) on Internet sites popular with younger teens.[263] The documents also show that the planned/actual television and print advertising for M-rated games resulted in extensive exposure to those under age 17 (typically 12-17).[264]

The following chart provides an overview of the extent to which each of the companies contacted by the Commission appears to have targeted teens under 17 in their marketing of M-rated games.

Targeting of M-Rated Games to an Under-17 Audience [265]

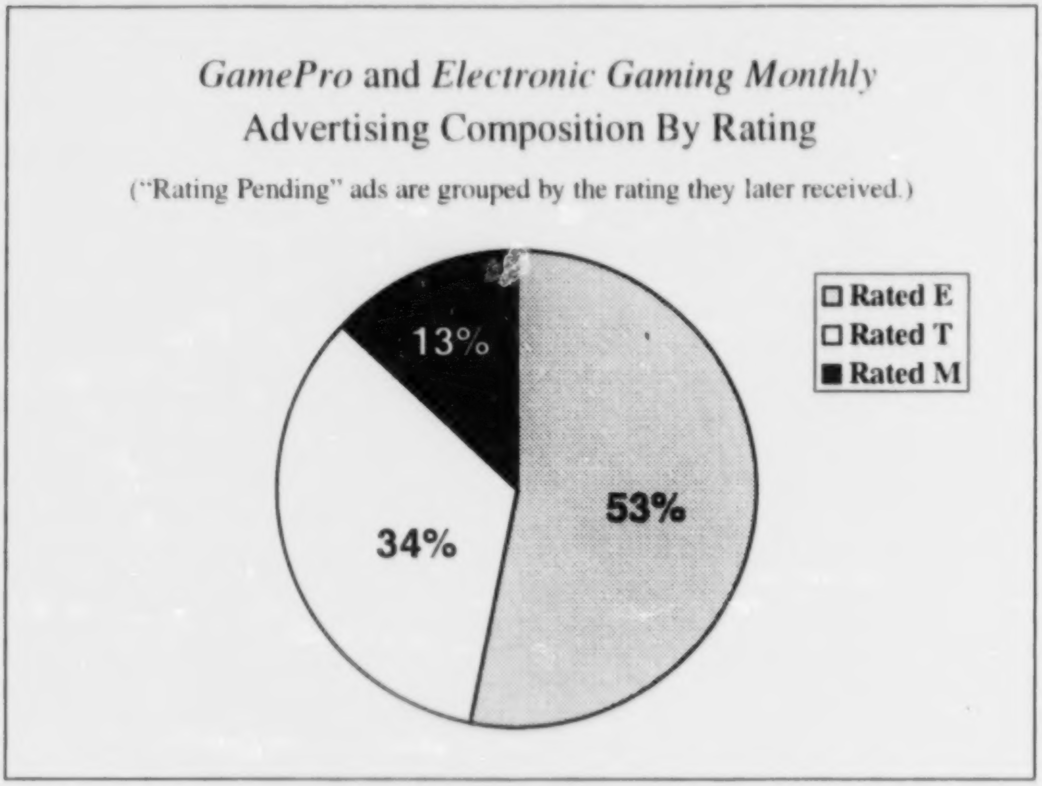
Company	A	B	C	D	E	F	G	H	I	J	K
Plans Expressly Target [266] Kids Under 17	Y	Y	N	Y	Y	Y	Y	Y	Y	Y	Y
Ads in Magazines Majority Under 18[267]	Y	Y	N	Y	Y	Y	Y	Y	Y	Y	N
Ads on Teen T.V. Shows[268]	Y	Y	n/a	Y	Y	n/a	Y	Y	n/a	Y	n/a
Ads on Web Sites Popular With Teens[269]	Y	n/a	Y	Y	Y	Y	Y	Y	Y	Y	Y

The companies' efforts at targeting youngsters under 17 appear to have had some success. Although only 7% of video games are rated M, a variety of studies and surveys indicate that these games, despite their "Mature" rating, are quite popular with boys under 17.[270] In a survey sponsored by the Commission, 24% of children between the ages of 11 and 16 included at least one M-rated game in their list of three favorite games.[271] Data from industry surveys in 1998 and in 1999 indicate that 40% of users of the M-rated games included in those surveys were under 18.[272] Information from game data registration from two companies is mixed, however. Data from one company indicate that for five of its M-rated games, 14% to 67% of the users were 17 and under, while data from another company indicate that for two of its M-rated games, 10% of the users were under age 18.[273]

1. Print advertising

All but two of the companies produced marketing documents containing plans to place ads for M-rated games in magazines that have a majority under-17 readership. Specifically, nine of the 11 companies' marketing documents show repeated plans to place numerous ads for M-rated games in magazines such as *GamePro*, *Electronic Gaming Monthly*,[274] *Expert Gamer*, *Tips and Tricks*, and the *Unofficial PlayStation Magazine*, all of which have a majority (from 54% to 68%) of readers or subscribers age 17 or under.[275]

The Commission reviewed 18 months (from January 1999 through June 2000) of two of those magazines – *GamePro* and *Electronic Gaming Monthly*.[276] This review reveals that 16 industry members, including eight of the companies contacted by the Commission, advertised M-rated games in these magazines. Although one company placed only a single ad, others used these magazines more frequently, with five IDSA members placing 20 or more advertisements for M-rated games.[277] In fact, the 16 companies collectively placed more than 200 advertisements for M-rated games in these magazines, even though 60% of their readership is 17 and under, indicating broad-based targeting that is inconsistent with the self-regulatory system.[278] A breakout of the magazine ads by rating[279] is presented below.[280]



GamePro and *Electronic Gaming Monthly*
Advertising Composition By Rating
("Rating Pending" ads are grouped by the rating they later received.)

2. Television advertising

Game companies also use television advertising to target M-rated games to teen audiences. Marketing documents set out a long list of televison programs popular with teens ages 12 to 17 on which companies planned to place their advertisements for M-rated games.[281] These programs include *The Simpsons, WWF Smackdown, That 70's Show, King of the Hill, Dawson's Creek, Buffy the Vampire Slayer, Xena: Warrior Princess, The Wayans Brothers, Hercules: The Legendary Journeys, Baywatch, X-Files, V.I.P., Smart Guy*, and *WCW Wrestling*.[282]

3EST COPY AVAILABI F

Company documents also show plans for frequent ad placements for M-rated games on cable networks popular with teens: MTV, Comedy Central, Sci-Fi, USA, TBS (wrestling), and TNT (wrestling). Indeed, at least two companies' media plans for several M-rated games expressly singled out programming on these networks because of their "high M12-24 composition" or because they were "Youth-targeted."[283] A few companies also planned television ads for shows airing in the afternoon, a time-frame particularly popular with teens.

3. Internet marketing

Many of the marketing documents describe plans to build game title awareness and generate sales through promotional efforts on the Internet and, in particular, at Web sites frequented by younger teens. Ten of the 11 companies (91%) produced marketing documents for M-rated games showing plans to place advertisements (typically in the form of banner ads) on popular teen Web sites.[284] These included gamespot.com, ign.com, mtv.com, happypuppy.com, and gamesdomain.com.[285] One marketing plan described placing ads at ign.com, gamespot.com, and mtv.com as a way to target males ages 12 to 25, and referred to mtv.com, in particular, as a "teen-targeted" site.

C. Marketing T-Rated Games to Children

Although the Commission's primary focus was M-rated games, the Commission also requested marketing documents for some games rated T (Teen) which contain descriptors for violence, and received information on approximately 85 such games. These documents reveal several instances in which company plans expressly targeted T-rated games to those under age 13,[286] including, in two cases, children as young as six. Overall, however, game companies appeared to expressly target an underage audience far less frequently for T-rated games than they did for M-rated games. Six of the 11 (55%) companies produced at least one marketing document for a T-rated game that listed children under the age of 13 as the primary or secondary targets of the advertising campaign.[287] Of the 41 T-rated games for which marketing or media plans specified a target age, 10 (24%) games had a plan that expressly included those under 13 in the target audience.[288]

In many instances, the planned magazine and television advertising campaigns to promote these T-rated games looked much like those for many M-rated games, with plans to place ads in the same magazines and on the same television shows.[289] In other instances, the planned programs and publications skewed younger than those used to market M-rated games. For example, marketing documents from two companies revealed plans to advertise three Teen games on either the Cartoon Network, Nickelodeon, or both; a large majority of the audience for these channels is between the ages of two and 11.[290] Other plans suggested ad placement on several print publications popular with young children – *DC Comics-Kids*, *Sports Illustrated for Kids*, *Nickelodeon Magazine*, and *Disney Adventures*.[291]

D. Licensing Products Based on M- and T-Rated Games

Company documents frequently reference plans to use or license images or characters from M- or T-rated games in a wide variety of products, including action figures, comic books, t-shirts, stickers, key chains, posters, mouse pads, sweatshirts, caps, decals, temporary tatoos, and hand-held versions of the game. As noted above, the IDSA Adcode does not expressly cover licensing.

One area that has drawn particular criticism is game licensees' marketing to children of action figures based on characters from popular M-rated games.[292] Sold in the toy aisles of major mass merchandisers and in toy stores, these action figures – regardless of the rating of the game on which the figure is based – are labeled as suitable for children, sometimes as young as four or five.[293] For example, the package for one action figure based on a violent M-rated game states prominently on the front, "Ages 4 and up."[294] The back of the package invites the reader to "[j]oin the blood battle" by playing the Nintendo 64 version of the game, which is M-rated. As an additional incentive to purchase the game, the package offers free game codes for navigating the M-rated version of the game.

Action figures, however, also may appeal to older collectors, and comic book retailers catering to adults may stock action figures in the collectibles area of their stores. Several magazine and Web sites target collectors, with ads offering "retired" action figures at premium prices.[295]

Perhaps in response to such criticism, one game company licensor recently adopted a policy to require its licensees not to advertise, market, or sell products based on M-rated games to those under 17, and to include on product packaging a statement that such products are based on an M-rated game. Another major licensee has begun labeling its licensed products that are based on M-rated games (and R-rated movies) as "Recommended for mature collectors."[296]

E. Retailing of Electronic Games

The ESRB has urged retailers to adopt policies restricting the sale of Mature- and Adult Only-rated electronic games. In particular, the ESRB's "Commitment to Parents" program encourages electronic game retailers to prohibit the sale of computer and video games rated M to persons under the age of 17 without parental permission, and to refuse to sell games rated AO to persons under 18.[297]

To assess the extent of children's access to violent M-rated games,[298] the Commission contacted 12 retailers and online sellers of electronic games. All of the electronic game retailers the Commission contacted carry M-rated games;[299] a few, however, restrict the types of M-rated games stocked. For example, one retailer states that it has a policy not to carry M-rated titles that contain certain content descriptors, including "Realistic Blood & Gore."[300] Another retailer has opened several stores that do not carry games with mature or adult content in order to cater specifically to children.[301] Most of the retailers contacted do not carry AO-rated games.[302]

The ESRB indicates that four retailers have agreed to make their best efforts not to sell games rated "Mature" to children under 17, and that the ESRB is giving each store that participates a certificate it can post announcing that it has made a "Commitment to Parents."[303] One of these four retailers uses a point-of-purchase cash register system that prompts the cashier, whenever the bar code for an M-rated game is scanned into the system, either to ask for age identification if the customer appears to be under 17 or to inform the adult purchaser that the product is intended for a mature audience.[304] A fifth retailer has adopted a policy of not renting or selling M-rated electronic games to youths under the age of 17 unless parental consent is given.[305]

None of the retailers contacted specifically requests age information before completing an Internet purchase, even where it has policies to verify age for in-store purchases. At least one retailer relies, instead, on its credit-card-only purchase policies to restrict children from buying inappropriate games.

FTC Mystery Shopper Survey Games

(380 Shoppers)

Was Rating Information Posted?	YES	12%
	NO	88%
Was Child Able to Make Purchase?	YES	85%
	NO	16%
Did Employee Ask Age?	YES	15%
	NO	85%

The undercover shopper survey of electronic game retailers conducted for the Commission demonstrates that children under 17 can easily buy M-rated games. Unaccompanied children ages 13-16 were able to purchase these games at 85% of the 380 stores visited.[306] Except at a few stores, the teens were not questioned or asked their age when buying the games. Even at the four electronic game retailers that the ESRB says have adopted the "Commitment to Parents" program or other restrictions on selling M-rated games to children under 17, underaged shoppers were able to purchase an M-rated game 81% of the time (in 64 of 79 stores).[307]

Recently, the major retailers of electronic games formed their own trade association, the Interactive Entertainment Merchants Association ("IEMA").[308] At its first "Executive Summit" in July 2000, IEMA members were asked to enhance their efforts to provide parents with information about the IDSA/ESRB rating system. Whether those efforts will include increased attention to checking age identification when selling M-rated products is not yet known.

VIII. CONCLUSION

Members of the motion picture, music recording, and electronic game industries routinely target children under 17 as the audience for movies, music, and games that they themselves acknowledge are inappropriate for children or warrant parental caution due to their level of violent content. The motion picture industry and, until late August, the music recording industry take the position that targeting children is consistent with their rating and labeling programs; the game industry does make targeting children a violation of its self-regulatory code, but violations are widespread. The Commission believes that by targeting children when marketing these products, the entertainment industries undermine their own programs and limit the effectiveness of the parental review upon which these programs are based. Moreover, most retailers make little effort to restrict children's access to these products with violent content.

For the motion picture, music recording, and electronic game industries, a self-regulatory program in which the public can have confidence should include: comprehensive ratings or labels that provide parents with meaningful information about the nature, intensity, and appropriateness for children of depictions of violence; an accurate and consistent rating or labeling process with clear standards; clear and conspicuous disclosures of the rating or label – with related age and content information – on packaging and in advertising; sales and marketing policies that are consistent with the ratings or labels; industry-wide participation; and mechanisms to ensure compliance.[309]

The motion picture, music recording, and electronic game industries should stop targeting children under 17 in their marketing of products with violent content. All three industries should increase consumer outreach, both to educate parents about the meaning of the ratings and to alert them to the critical part the industries assume parents play in mediating their children's exposure to these products. Because of First Amendment protections afforded to these products, industry is in the best position to provide parents with the information they need. Finally, parents must become familiar with the ratings and labels, and with the movies, music, and games their children enjoy, so they can make informed choices about their children's exposure to entertainment with violent content.

The body of the Report describes the result of the Commission's survey of marketing practices. The empirical inquiry, however, inevitably suggests certain conclusions about ways in which the present system of self-regulation could be improved.

- **Industry should establish or expand codes that prohibit target marketing and impose sanctions for violations.**

The target marketing of R-rated films, explicit-labeled music, and M-rated games to children under 17 is pervasive, and the target marketing of PG-13-rated films and T-rated games to children under 12 is common. The Commission believes that these marketing efforts send children the message that these are movies they should see, music recordings they should listen to, and games they should play. At the same time, the message inherent in the rating or label – that the product's content is inappropriate for children or that it requires a strong warning to parents – is not adequately conveyed. Marketing directly to children essentially is an end-run around the parental review role underlying the ratings and advisory labels.

While it comes up short on compliance, the electronic game industry at least acknowledges that targeting children undermines its rating system; it has crafted a code of conduct to address this issue. In late August 2000, the music recording industry trade association recommended that recording companies not advertise explicit-labeled recordings in outlets where a majority of the audience is under 17. The motion picture industry has no similar code or guideline. All three industries should institute codes of conduct that:

- Prohibit placing advertising for R-rated/M-rated/explicit-labeled products in media or venues with a substantial under-17 audience.
- Prohibit licensees from marketing action figures, toys, and other products associated with R movies and M games to under-age audiences and require a disclosure that the product is based on an entertainment product rated R or M.
- Provide for no-buy lists of media outlets popular with under-17 audiences (including school venues, youth-oriented comic books, top teen TV shows, and younger teen magazines).
- Encourage the auditing of ad placement to verify that advertisements are not reaching a substantial under-17 audience.
- Encourage media screening of ads for consistency with these principles.
- Provide for the associations to monitor and encourage member compliance with these policies, and to impose meaningful sanctions for noncompliance.

- **Industry should improve self-regulatory system compliance at the retail level.**

Restricting children's access to R-rated movies, explicit-labeled music recordings, and M-rated games is an essential complement to all the rating and labeling programs. The industries should encourage their members, as well as third-party retailers, to:

  - Check age or require parental permission before selling or renting R-rated/M-rated/advisory-labeled products.
  - Clearly and conspicuously display the ratings and advisories on packaging and in advertising, and avoid covering or obscuring them.
  - Avoid sales of R-rated/M-rated/advisory-labeled products on retail Internet sites unless they use a reliable system of age verification.
  - Develop guidelines for the electronic transfer of movies, music, and games. Without action to address electronic access to these products, the ratings and advisory label may be of limited value to parents in the future.

- **Industry should increase parental awareness of the ratings and labels.**

The industries should expand their outreach programs to parents to facilitate informed choice and raise awareness and understanding of the ratings, content descriptors, and advisory labels. They have begun to move in that direction with www.parentalguide.org, which provides links to the various association sites that have information about each rating or label. In addition, the industries should:

  - Clearly and conspicuously display the rating or advisory label and the descriptors in all advertising and product packaging.
  - Encourage the media to include rating and labeling information in reviews. This information often is included in movie reviews, but less frequently is included in game or music reviews.
  - Take additional steps to inform parents, especially by including rating and labeling information in retail stores and on Web sites, where products can be sampled, downloaded, or purchased.

Implementation of these specific suggestions would significantly improve the present regimes of self-regulation. The Report demonstrates, however, that mere publication of codes is not sufficient. Self-regulatory programs can work only if the concerned industry associations actively monitor compliance and ensure that violations have consequences. The Commission believes that continuous public oversight also is required, and that Congress should continue to monitor the progress of self-regulation is this area.

ENDNOTES

1. *See* Letter from William J. Clinton, President of the United States, to Janet Reno, Attorney General of the United States, and Robert Pitofsky, Chairman, Federal Trade Commission (June 1, 1999) (on file with the Commission).

2. Legislation calling for the FTC and the Justice Department to conduct such a study was introduced in both houses of Congress following the Columbine incident. *See* Amendment No. 329 by Senator Brownback et al. to the *Violent and Repeat Juvenile Offender Accountability and Rehabilitation Act of 1999*, S. 254, 106th Cong. § 511 (1999); H.R. 2157, 106th Cong. (1999); 145 Cong. Rec. S5171 (1999). In May 1999, the U.S. Senate Committee on Commerce, Science, and Transportation conducted hearings on the marketing of violent entertainment media to children. *See Marketing Violence to Children: Hearing Before the Senate Comm. on Commerce, Science, and Transp.*, 106th Cong. (1999), www.senate.gov/~commerce/hearings/hearin99.htm (visited July 30, 2000). Based on those hearings, in September 1999, the Majority Staff of the Senate Committee on the Judiciary issued a committee report on this issue. *See* Majority Staff of the Senate Comm. on the Judiciary, 106th Cong., *Report on Children, Violence, and the Media: A Report for Parents and Policy Makers* (Comm. Print. 1999), www.senate.gov/~judiciary/mediavio.htm (visited July 31, 2000).

3. The FTC has the authority to conduct this study under Section 6 of its authorizing statute, 15 U.S.C. § 46. Section 6(f) of the FTC Act provides that "the Commission shall also have power . . . [t]o make public from time to time such portions of the information obtained by it hereunder as are in the public interest; and to make annual and special reports to the Congress . . . ."

4. In the two years leading up to the Columbine tragedy, more than a dozen students or teachers had been killed in six school-related shootings in Edinboro, Pennsylvania; Richmond, Virginia; West Paducah, Kentucky; Pearl, Mississippi; Jonesboro, Arkansas; and Springfield, Oregon. *See* John Kip Cornwell, *Preventing Kids from Killing*, 37 Hous. L. Rev. 21, 23 & n.13, 24 (2000); Sue Anne Presley, *Year of Mass Shootings Leaves Scar on U.S.; Sense of Safety Suffers As Fewer Believe 'It Can't Happen Here,'* Wash. Post, Jan. 3, 2000, at A1. After Littleton, school shootings occurred in several other cities including Conyers, Georgia; Fort Gibson, Oklahoma; and Flint, Michigan. *Id.*; *see, e.g.*, David Barboza, *Boy 6, Accused in Classmate's Killing*, N.Y. Times, Mar. 1, 2000, at A14; *Fort Gibson Middle School to Resume Classes a Day After Shooting*, www.cnn.com/1999/US/12/06/okla.school.shooting.06/ (visited July 13, 2000).

5. Some observers point out that other Western democracies have significantly lower juvenile homicide rates than the United States. *See* Sissela Bok, *Mayhem: Violence As Public Entertainment* 7–9 (1998) (evaluating arguments about American culture). Indeed, the Centers for Disease Control and Prevention found that the United States has a teen homicide rate five times greater than the rate of 25 other industrialized countries combined. *See* Howard N. Snyder & Melissa Sickmund, National Center for Juvenile Justice, *Juvenile Offenders and Victims: 1999 National Report*, at 25 [hereinafter *Juvenile Offenders*].

Still, the rate of violence perpetrated by young people has actually declined in the 1990's and school-associated violent death remains extremely rare. *See Juvenile Offenders*, *supra*, at 31 (reporting and analyzing crime statistics collected by the Federal Bureau of Investigation and the Bureau of Justice Statistics from the Uniform Crime Reports and the National Crime Victimization Survey). The 1999 report, which contains statistics collected through 1997, is available at www.ojjdp.ncjrs.org. Additional statistics for teen homicide rates through 1998 are available at www.ojp.usdoj.gov/bj/homicide/teens.htm. *See also* Centers for Disease Control and Prevention, *Assessing Health Risk Behaviors Among Young People: Youth Risk Behavior Surveillance System, At-A-Glance 2000*, www.cdc.gov/nccdphp/dash/yrbs/yrbsaag.htm (visited June 26, 2000).

See also Lou Harris & Assocs., *The Metropolitan Life Survey of the American Teacher, 1999: Violence in America's Public Schools – Five Years Later: A Survey of Students, Teachers, and Law Enforcement Officers* (May 26, 1999) (noting sizeable decrease in public school teachers' and students' perceptions of amount of school violence between 1993 and 1998, but reporting sizeable minority's concerns that school violence would increase in next two years); Thomas Cole, *Ebbing Epidemic: Youth Homicide Rate at a 14-Year Low*, 281 JAMA 25 (Jan. 6, 1999); *cf.* Nancy D. Brener et al., *Recent Trends in Violence-Related Behaviors Among High School Students in the United States*, 282 JAMA 440 (Aug. 4, 1999) (reporting decrease among adolescents in non-fatal aggressive behaviors such as fighting and weapon carrying).

6. *See generally* Mark H. Moore & Michael Tonry, *Youth Violence*, *in* 24 *Crime and Justice: A Review of Research* (Michael Tonry & Mark H. Moore eds., 1998); L. Rowell Huesmann et al., *The Effects of Media Violence on the Development of Antisocial Behavior*, *in Handbook of Antisocial Behavior* (David M. Stoff et al. eds., 1997).

7. In the days following the Columbine killings, many of the major news outlets featured stories about Dylan Klebold and Eric Harris's infatuation with movies, music, and video games that contained extremely violent content and reinvigorated the public debate about the effects of violent entertainment media on youth. *See, e.g.*, Steven Levy, *Loitering on the Dark Side – The Columbine High Killers Fed on a Culture of Violence That Isn't About to Change*, Newsweek, May 3, 1999, at 39; Karen Thomas, *Surrounded by Sound and Fury: Whirlwind of Violence, Hate Sweeps Kids On Line and Off*, USA Today, Apr. 22, 1999, at D1.

8. *See, e.g.*, Gregg Easterbrook, *Watch and Learn*, The New Republic, May 17, 1999, at 22; Erica Goode, *Terror in Littleton: the Motives; When Violent Fantasy Emerges as Reality*, N.Y. Times, Apr. 25, 1999, § 1 at 30. The Commission's study is concerned only with the marketing practices of the entertainment media that depict violence, and not with the news media's depiction of real world violence.

9. Congressional committees held hearings, issued reports, and considered legislation on entertainment media violence. *See generally supra* note 2. Public health organizations such as the American Medical Association, the American Academy of Pediatrics, and the American Psychological Association expressed their concerns about the "excessive portrayal of violence in the entertainment industry." *See* American Medical Ass'n, *AMA Applauds President's Call for*

Study of Effects of Media Violence Marketing on Children, June 1, 1999 (press release), www.ama-assn.org/ama/pub/article/1835.html (visited June 30, 2000); *see also* American Academy of Pediatrics Committee on Public Education, *Media Education*, 104 Pediatrics 341–43 (Aug. 1999), www.aap.org/policy/re9911.html (visited June 30, 2000). Parent and media responsibility advocacy groups renewed their calls for an end to the marketing of violence to children. *See, e.g.*, S. Robert Lichter et al., Center for Media and Public Affairs, *Merchandizing Mayhem: Violence in Popular Culture* [hereinafter *Merchandizing Mayhem*] (Sept. 1999), www.cmpa.com/archive/viol98.htm (visited June 30, 2000). And a broad coalition of public figures (including former Presidents Gerald Ford and Jimmy Carter, Retired General H. Norman Schwarzkopf, several U.S. Senators, religious leaders, actors, psychiatrists, psychologists, and university professors and other educators) devised an Internet-based *Appeal to Hollywood* to urge media leaders to adopt a new voluntary code of conduct for the entire entertainment industry. Specifically, the signatories to the *Appeal to Hollywood* called for a code of conduct, broadly modeled on the National Association of Broadcasters ("NAB") Television Code, that would:

> (1) affirm in clear terms the industry's vital responsibilities for the health of our culture; (2) establish certain minimum standards for violent, sexual, and degrading material for each medium, below which producers can be expected not to go; (3) commit the industry to an overall reduction in the level of entertainment violence; (4) ban the practice of targeting adult-oriented entertainment to youth markets; (5) provide for more accurate information to parents on media content while committing to the creation of "windows" or "safe havens" for family programming (including a revival of TV's "Family Hour"); and, finally, (6) pledge the industry to significantly greater creative efforts to develop good family-oriented entertainment.

See An Appeal to Hollywood, www.media-appeal.org/appeal.htm (visited June 26, 2000). In the 1980's, the Justice Department challenged, on antitrust grounds, certain unrelated provisions of the NAB code that would have artificially increased the demand for commercial time. *See United States v. National Ass'n of Broadcasters*, 536 F. Supp. 149, *consent entered*, 553 F. Supp. 621 (D.D.C. 1982). But the Justice Department's lawsuit did not challenge certain NAB restrictions on advertising aimed at children. Indeed, in 1994, the Justice Department approved voluntary television violence guidelines by the Association of Independent Television Stations, which included a series of parental advisories to be used for programs with violent material. *See* Robert Pitofsky, Chairman, Federal Trade Commission, *Self-Regulation and Antitrust, Remarks at the D.C. Bar Association Symposium, Washington, D.C.* [hereinafter *Self-Regulation and Antitrust*] (Feb. 18, 1998), www.ftc.gov.speeches/pitofsky/self4.htm (visited June 26, 2000).

10. *See* Donald E. Cook, M.D., President, American Academy of Pediatrics; Clarice Kestenbaum, M.D., President, American Academy of Child & Adolescent Psychiatry; L. Michael Honaker, Ph.D., Deputy Chief Executive Officer, American Psychological Ass'n; & E. Ratcliffe Anderson, Jr., American Medical Ass'n, *Joint Statement on the Impact of Entertainment Violence on Children*, July 26, 2000 (statement released at Congressional Public Health Summit), www.aap.org/advocacy/release/jstmtevc.htm (visited Aug. 1, 2000). For a review of

some of the research on the impact of violence in entertainment media on children, see Appendix A (*A Review of Research on the Impact of Violence in Entertainment Media*).

11. *Id.*

12. Researchers funded by the Office of Juvenile Justice and Delinquency Prevention ("OJJDP") of the Department of Justice are studying the characteristics of at-risk juveniles and factors that contribute to violence committed by or against juveniles. OJJDP reports that "the risk that an adolescent will become involved in violent offending and/or be a victim of violence varies based on a number of different factors, including individual characteristics, family characteristics, peer and school factors, neighborhood environment, and daily activities." OJJDP, *Report to Congress on Juvenile Violence Research* 5 (July 1999) (summarizing results of seven violence studies) [hereinafter OJJDP Report]. The National Institute of Mental Health ("NIMH"), is also involved in ongoing research into the causes of youth violence. NIMH is involved in basic research and clinical studies, and oversees research grants at universities and other institutions, on the causes of youth violence. For an overview highlighting what is known about risk factors for the development of aggressive and antisocial behavior from early childhood to adolescence and into adulthood from a research perspective, see the fact sheet on *Child and Adolescent Violence Research at the NIMH*, available at www.nimh.nih.gov/publicat/violenceresfact.cfm (visited Aug. 1, 2000). More data on these factors should be available by the end of this year: the Surgeon General is currently preparing a report on the various risk factors and developmental markers that have been connected through epidemiological research with youths between the ages of 12-18 who commit violent acts. *See* Opening Remarks by the President in White House Strategy Meeting on Children, Violence, and Responsibility (May 10, 1999), www.pub.whitehouse.gov/uri-res/I2R?urn:pdi://oma.eop.gov.us/1999/5/17/5.text.1 (visited Aug. 14, 2000).

13. *See* Barry Meier, *Terror in Littleton: The Gun Debate; In Renewed Battle Over Weapons Control, Both Sides Use Attack to Advance Agendas*, N.Y. Times, Apr. 26, 1999, at A17; *see also* Jill M. Ward, Children's Defense Fund, *Children and Guns: A Children's Defense Fund Report on Children Dying from Gunfire in America* (Oct. 1999), www.childrensdefense.org. In its report to Congress, OJJDP reported that firearms were "involved in no less than 80% of the incidents of each of the [OJJDP-sponsored juvenile] violence studies reporting on this topic." *OJJDP Report*, *supra* note 12, at 11-12.

14. *See* Bok, *supra* note 5, at 7–9; *cf.* American Academy of Pediatrics Committee on Communications, *Media Violence*, 95 Pediatrics 949, 951 (1995). Although most researchers attribute the lower rates of teen homicide in other countries to stricter gun control laws, some note that other countries place more controls on the media than does the United States. Many stable industrialized democracies, in the absence of a strong constitutional guarantee of freedom of expression and First Amendment-like safeguards against censorship, monitor the media and enforce regulations regarding the advertising and marketing of the media, either directly or through quasi-governmental bodies. They also employ ratings systems that contain some similarities to – and some differences from – those currently used by the media industries in the United States.

15. *See, e.g.*, Jonathan Kellerman, *Savage Spawn: Reflections on Violent Children* (1999) (acknowledging that entertainment media violence might cause an adolescent who is already prone to violent behavior to engage in harmful conduct).

The entertainment media are a particularly important part of youth culture in the U.S. According to a Kaiser Family Foundation study released in November 1999, which examined media use among a nationally representative sample of more than 3,000 children ages 2-18, the typical American child spends an average of more than 38 hours a week – nearly the equivalent of a full-time workweek – with entertainment media outside of school. The Henry J. Kaiser Family Foundation, *Kids and Media @ The New Millennium: A Comprehensive National Analysis of Children's Media Use* (1999), www.kff.org. (visited June 26, 2000). Other studies indicate that children's use of the media may be even higher. *See* Appendix B (*Children as Consumers of Entertainment Media: Media Usage, Marketing Behavior and Influences, and Ratings Effects*). Although much of that time is spent watching television, youngsters spend an average of nearly 10 hours a week listening to music, and nearly five hours a week playing video games or using a computer for fun. The Kaiser study found that younger teens spend the most time watching movies, with children aged 8-13 spending three hours per week, and teens ages 14-18 spending one hour and 17 minutes per week at movie theaters. *Id.* Even more recent data released in June 2000 by the Annenberg Public Policy Center are consistent with these results. *See* Emory H. Woodard, IV & Natalia Gridina, *Media in the Home 2000: The Fifth Annual Survey of Parents and Children* 8 [hereinafter *Media in the Home 2000*] (Annenberg Pub. Policy Ctr. U. Pennsylvania 2000). These figures highlight the significant role that the entertainment media – and advertising and promotion for the various media – play in children's lives.

16. The entertainment media – in part in recognition of their societal role and in part in reaction to public criticism and events like the Littleton tragedy – have been engaged in an ongoing process of trying to determine their level of responsibility to American children and parents. *See* David Finegan, *BMG's Zelnick: "Increase the Peace" in Media*, Hollywood Reporter (Feb. 23, 2000). BMG Entertainment President Strauss Zelnick called for "more industry discussion on violent entertainment and more industry policing of its products." In addition, Zelnick advocated that "[t]he ultimate responsibility for deciding what music to listen to and what TV shows to watch rests with consumers and, in the case of kids, their parents . . . . We need to give them the tools that they need to exercise that responsibility." Zelnick did, however, emphasize that the industry "can't and won't ask our artists to eliminate any mention of sex and violence – not even loveless sex and pointless violence." *Id.*

See also Steve Chagollan, *Biz Influence Spans Beyond H'wood*, Daily Variety, June 9, 2000, at A2; Michael Mehle, *Killer Concepts: Does Entertainment Celebrate Violence for Its Own Sake? Critics and Programmers Argue Their Case*, Denver Rocky Mtn. News, Apr. 16, 2000, at D14; Claudia Puig, *Hollywood Examines Its Soul: Worried About Censorship, Leaders Debate How to Uncreate a Monster*, USA Today, Apr. 27, 1999, at D1; Ira Teinowitz & Ann Marie Kerwin, *Media Tighten Policy on Ads' Violent Themes*, Advertising Age, May 10, 1999, at 3. *But see* Sharon Waxman, *Click. Bang. It's Only A Game: Video Designers Shrug Off Blame for Teen Violence*, Wash. Post, May 27, 1999, at C1.

17. Fay Fiore, *Media Violence Gets No Action from Congress*, L.A. Times, Nov. 20, 1999; *see generally* Dennis Hunt, *Debate Over Film Violence Intrudes on a 'Love' Fest*, USA Today, May 17, 1999, at D4.

18. For example, the FTC has supported the National Advertising Division of the Council of Better Business Bureaus' self-regulatory system, which is overseen by the National Advertising Review Council, for many years. *See* Pitofsky, *Self-Regulation and Antitrust, supra* note 9. The FTC has also reviewed the effectiveness of the alcohol industry's self-regulatory guidelines for advertising and marketing to underage audiences. *See* Federal Trade Commission, *Self-Regulation in the Alcohol Industry: A Review of Industry Efforts to Avoid Promoting Alcohol to Underage Consumers, A Report to Congress from the Federal Trade Commission* [hereinafter *Self-Regulation in the Alcohol Industry*] (Sept. 1999), www.ftc.gov.reports/alcohol/alcoholreport.htm. The Commission's interest in industry self-regulation in the entertainment media marketing context is motivated in part by its strong belief in the benefits of self-regulation, and in part by its concern that government regulation of advertising and marketing – especially if it involves content-based restrictions – may raise First Amendment issues. The First Amendment issues that have been raised in the context of restricting or limiting advertisements for media products are identified in Appendix C (*First Amendment Issues in Public Debate over Governmental Regulation of Entertainment Media Products with Violent Content*).

19. *See* Appendix C.

20. The history of the development of the rating systems is described in Appendix D (*An Overview of the Entertainment Media Industries and the Development of Their Rating and Labeling Systems*).

21. The electronic game and motion picture industry systems identify those products that have received a particular rating due to the products' violent content. The recording industry members, in contrast, were not able to specify which recordings had received a parental advisory label due to violent lyrics. They instead provided information about recordings that contain "explicit" content, which may include strong language or references to violence, sex, or substance abuse.

22. The companies that provided information and documents to the FTC for this study are as follows: (a) *Movie Studios and Theaters*: American Multi-Cinema, Inc.; Carmike Cinemas, Inc.; Cinemark USA, Inc.; GC Companies, Inc.; Loews Cineplex Entertainment Corp.; Metro-Goldwyn-Mayer Studios, Inc.; National Amusements, Inc.; Paramount Pictures; Sony Pictures Entertainment; Regal Cinemas; Time Warner Entertainment Company, L.P. (including its independently managed divisions Warner Bros. and New Line Cinema); Twentieth Century Fox Film Corp.; United Artists Theatre Circuit, Inc.; Universal Studios, Inc.; The Walt Disney Company (including its separately operated subsidiary Miramax Film Corp.); (b) *Music Recording Companies*: BMG Entertainment; EMI Recorded Music, North America; Sony Music Entertainment, Inc.; UMG Recordings, Inc.; and Warner Music Group, Inc.; (c) *Electronic Games Designers and Publishers*: Acclaim Entertainment, Inc.; Activision, Inc.; Apogee

Software, Ltd.; Capcom Entertainment, Inc.; Eidos Interactive, Inc.; Electronic Arts, Inc.; GT Interactive Software Corp. (now Infogrames, Inc.); Id Software, Inc.; Interplay Entertainment Corp.; Konami of America, Inc.; Midway Games, Inc.; Sega Companies (Sega of America, Inc., Sega Enterprises, Inc., & SegaSoft Networks, Inc.); Sierra On-Line, Inc.; (d) *Retailers*: Amazon.com, Inc.; Babbage's Etc.; Best Buy Co., Inc.; Blockbuster Video; CDNow, Inc.; Electronic Boutique Holdings Corp.; eToys, Inc.; Hollywood Entertainment Corp.; MTS, Inc. (Tower Records/Video/Books); Musicland Group, Inc.; Target Stores, Inc.; Toys "R" Us, Inc.; Trans World Entertainment Corp.; Wal-Mart Stores, Inc.; and (e) *Media Outlets*: Black Entertainment Television, Inc.; Channel One Network; MTV Networks. *See* Appendix E (*Entertainment Industry Information Requests*).

23. FTC staff met and corresponded with the Motion Picture Association of America ("MPAA"); the National Association of Theatre Owners ("NATO"); the Recording Industry Association of America ("RIAA"); the National Association of Recording Merchandisers ("NARM"); the Entertainment Software Rating Board ("ESRB"); the Video Software Dealers Association ("VSDA"); the Interactive Digital Software Association ("IDSA"); the Internet Content Rating Association ("ICRA"); the Software and Information Industry Association ("SIIA"); the Interactive Entertainment Merchants Association ("IEMA"); and the American Amusement Machine Association ("AAMA").

24. Section 6(f) of the FTC Act, 15 U.S.C. § 46, constrains the FTC from disclosing publicly materials that contain or constitute trade secrets or privileged or confidential commercial or financial information. When the Commission determined that certain materials or information that the companies or trade associations had marked as "confidential" could be disclosed under the statute for this Report, it provided the companies with notice of the Commission's intent to disclose such information, as required under Section 21 of the FTC Act, 15 U.S.C. § 57b-2, and the applicable Commission Rules. In the case of confidential commercial or financial information that the Report discloses in anonymous or aggregated form, the source document is not specifically cited.

25. In addition to industry sources, the Commission received information from a wide range of consumer, public health, and advocacy organizations. The American Academy of Pediatrics, American Psychological Association, Center for Media Education, Center for Media and Public Affairs, Children Now, Commercial Alert, The Lion & Lamb Project, Mediascope, National Institute on Media and the Family, National PTA, and Parents' Music Resource Center were among the organizations that provided information to the Commission.

26. *See* Appendices E (*Entertainment Industry Information Requests*) and F (*Mystery Shopper Survey and Parent-Child Survey*). The Commission is grateful for the data and analysis concerning Internet advertising provided by Anne Rollow, a Master's Degree Candidate at the John F. Kennedy School of Government and Harvard Business School, and author of *Self-Regulation in the Entertainment Industry: A Study of Online Marketing and Advertising Practices for Entertainment Products with Violent Content* (on file with the Kennedy School of Government and the Commission).

27. Jack Valenti, *The Voluntary Movie Rating System: How It Began, Its Purpose, The Public Reaction* 4 (1996).

28. In *Ginsberg v. New York*, 390 U.S. 629 (1968), the Supreme Court held that material that was not obscene for adults might nonetheless be obscene for children. In *Interstate Circuit v. Dallas*, 390 U.S. 676 (1968), the Court struck down as unconstitutionally vague a local ordinance establishing a motion picture classification board. Nevertheless, it held that such a classification ordinance, if narrowly drawn, could be constitutional due to the state's interest in regulating the dissemination of material to juveniles that it could not regulate as to adults. In the years since the Supreme Court decided *Interstate Circuit*, the Court has decided many cases involving issues of speech and children. For a discussion of these cases and the constitutionality of governmental regulation in this area, see Appendix C.

29. *Rules and Regulations of the Classification and Rating Administration*, Art. II § II (A) (1998). The MPAA members studios are: The Walt Disney Company; Time Warner Entertainment Company, L.P.; Paramount Pictures; Universal Studios, Inc.; Twentieth Century Fox Film Corp.; Sony Pictures Entertainment; and Metro-Goldwyn-Mayer Studios, Inc. MPAA member companies distributed at least 90 of the 100 highest-earning films at the box office over each of the past five years, in terms of gross receipts. *See NATO 1999-2000 Encyclopedia of Exhibition* 336-39 (top releases for 1995-1998); www.worldwideboxoffice.com (top releases for 1999).

The agreement not to distribute a film without a rating apparently does not extend to home video. For example, Universal Studios recently released an unrated version of the film *American Pie*.

30. *See* Opinion Research Corp., *An Appraisal of the Motion Picture Industry's Voluntary Rating System* [hereinafter *MPAA Survey*] (July 1998) (telephone survey of 2,021 adults and 254 teenagers ages 12 to 17 years old); The Henry J. Kaiser Family Foundation, *Parents and the V-Chip: A Kaiser Family Foundation Survey* [hereinafter *Kaiser Survey*] (May 1999) (telephone survey conducted by Princeton Survey Research Associates of 1,001 parents of children ages 2-17), www.kff.org/content/archive/1477.

31. *Id.*

32. The Commission sent requests to all seven MPAA member studios. Two additional studios, Miramax Film Corp. and New Line Cinema, are subsidiaries of The Walt Disney Company and Time Warner Entertainment Company, L.P., respectively. Because they are under separate management, they received separate requests.

33. The studios and theaters were generally cooperative in supplying their marketing materials. All the film studios redacted financial information from their media plans, citing its sensitive competitive nature and tangential relevance to the study. Accordingly, the Commission does not have figures on the costs associated with marketing individual films, although the MPAA estimates the average marketing cost for a film in 1999 at $24.5 million. Valenti, *The*

"Contradiction Molecule": The Rise of the American Movie Goer – and Other Quirks in Human Behavior 2 (Mar. 7, 2000) (speech on file with the Commission). The studios provided ample material to answer the core question: whether the films in question were marketed to those under the age designated in the rating.

34. Third-party views of the motion picture rating system and of the other rating and labeling programs studied for this Report are presented in Appendix G (*Third-Party Views and Suggestions for Improvement of the Entertainment Media Rating and Labeling Systems*).

35. *See* www.filmratings.com.

36. *See* Voluntary Response of the Motion Picture Association of America, Inc., Including Responses of the Classification and Rating Administration and the Advertising Administration [hereinafter *MPAA 9/21/99 Submission*] (Sept. 21, 1999), at 2. CARA members serve "at will" and can be removed at any time with or without cause. *Id.*

37. Richard M. Mosk, *Motion Picture Ratings in the United States*, 15 Cardozo Arts & Entertainment L. J. 135, 142 (1997).

38. *Id.*

39. Valenti, *supra* note 27, at 6.

40. *MPAA 9/21/99 Submission*, at 8 (fewer than two percent of CARA's ratings have been appealed).

41. *Rules and Regulations of the Classification and Rating Administration*, *supra* note 29, at Art. III § I (A).

42. *Id.* at Art. III § IV (D). If the appeal is successful, the film will be rated as requested by the appellant.

43. *See* www.filmratings.com (visited July 18, 2000) (explanation of the PG-13 category). *See also* www.mpaa.org/movieratings/about/index.htm; Valenti, *supra* note 27, at 8 ("If violence is too rough or persistent, the film goes into the R (restricted) rating.").

44. *See* www.mpaa.org/movieratings/search.htm (visited June 22, 2000).

45. A September 1999 study conducted by the Center for Media and Public Affairs ("CMPA") reported that, of the 50 top-grossing films in 1998, half of the 10 most violent movies – as determined by CMPA – were rated PG-13 (the other half were rated R). *Merchandizing Mayhem*, *supra* note 9. To determine the 10 most violent films, CMPA counted the number of scenes containing violence, which was defined as any deliberate act of physical force or use of a weapon in an attempt to achieve a goal, further a cause, stop the action of another, act out an angry impulse, defend oneself from attack, secure material reward, or merely to intimidate others. Thus defined, the 10 most violent movies of 1998 were *Saving Private Ryan* (R), *The Mask of*

Zorro (PG-13), *Lethal Weapon 4* (R), *Blade* (R), *Rush Hour* (PG-13), *Ronin* (R), *The Negotiator* (R), *U.S. Marshals* (PG-13), *Man in the Iron Mask* (PG-13), and *Small Soldiers* (PG-13).

46. Motion Picture Association of America, Inc., *MPAA Advertising Handbook* 3 (1997); Valenti, *supra* note 27, at 10.

47. *See MPAA Advertising Handbook*, *supra* note 46, at 6, 16-17, 21 ("all print advertising must be suitable for all audiences"; "trailer for general audiences must be suitable for all audiences and must not contain any scenes which most parents would find objectionable to their young children"; "[a]ll television spots should be made with a general audience in mind.").

48. *Id.* at 4.

49. *Id.* at 16-17.

50. Valenti, *supra* note 27, at 10.

51. *Id.* Because the studios desire to show trailers to the widest audiences possible, virtually all national releases regardless of their final rating – including all the R-rated movies examined by the Commission – create "all-audience" trailers.

52. The MPAA deems a "teaser" trailer any trailer disseminated before a film is rated. Once a film is rated, it is termed a "regular" trailer. *MPAA Advertising Handbook*, *supra* note 46, at 17.

53. In addition, CARA will often determine that a film deserves a PG or PG-13 rating based on its theme. For these movies, if the trailer conveys the adult-oriented story, it has conveyed something CARA deemed inappropriate for children without parental guidance.

54. *See MPAA Advertising Handbook*, *supra* note 46, at 2.

55. Additional examples include the trailer for *The General's Daughter*, which contains references to rape and "worse than rape," and the trailer for *The Jackal*, which deals with assassination.

56. *See MPAA Advertising Handbook*, *supra* note 46, at 21.

57. Documents submitted to the Commission show that NATO members advocated issuing explanations for ratings as early as 1984, but the MPAA member studios did not approve the inclusion of explanations until six years later.

58. Memorandum from Bethlyn Hand, Director, MPAA Advertising Administration to All Advertising Directors (Nov. 19, 1999) (CARA "discusses the rating reasons with each individual company. When the rating is accepted, the reasons become part of the rating . . . .") (on file with the Commission).

59. NATO has advocated placing explanations in all print advertising since at least 1994. The MPAA appeared to acquiesce to placing explanations in print advertising in November 1999, when it announced jointly with NATO that rating reasons would be placed in print advertising. NATO & MPAA, *Movie Rating Explanations to Augment All Print Advertising*, Feb. 9, 2000 (joint press release). This agreement, however, was never implemented.

60. *Movie Ratings: Not Fit for Viewing*, U.S. News & World Report, Apr. 3, 2000, at 67 (MPAA focus groups found print size too small; industry contracts limit print size). The current referral to the Web site where explanations are posted, however, takes up as much space as a typical explanation that accompanies the film:

> **"for rating reasons go to www.filmratings.com"** versus
> **"for some brutal medieval battles"** or
> **"for some horror violence and gore"** or
> **"for intense sequences of strong violence and strong language"** or
> **"for intense sequences of action violence, sexuality and innuendo"** or
> **"for thematic elements involving death, some disturbing images and language."**

61. Valenti, *The "Contradiction Molecule," supra* note 33.

62. The MPAA maintains an explanation of its rating system on its own Web site, available at www.mpaa.org; *see also* www.cara.org. A search feature available at both Web sites, as well as at www.filmratings.com, displays reasons (*e.g.*, language, violence, nudity, sex, and drug use) for a particular movie's rating.

63. *See, e.g., Poll: Most in U.S. Embracing New Technologies*, June 6, 2000, www.cnn.com.2000/TECH/computing/06/06/digital.innovation/index.html (visited July 26, 2000) (nearly half of U.S. households have Internet access).

64. The referral is not present in or is not legible in many newspaper advertisements, even when those ads prominently display the URL for the film's official Web site.

The Commission visited the official movie Web sites for 46 rated films in December 1999 and for 38 rated films in June 2000. *See* Appendix H (*Entertainment Media Ratings Information and Self-Regulatory Efforts on the Internet*). None provided rating explanations, nor did they link to any ratings explanation site.

65. *See Kaiser Survey, supra* note 30 (about 82% of parents reported using the movie rating system; of those, 90% found the system "very useful" or "somewhat useful"); *MPAA Survey, supra* note 30 (75% of American parents with children under 17 believe the movie rating system is "very useful" or "fairly useful"); Peter D. Hart Research Assocs., *Entertainment Software Rating Board Survey* (conducted Oct. 8-17, 1999) [hereinafter *ESRB Survey*] (survey of 1,005 adults with children ages 3-17 living in their household; 82% of respondents found the movie rating system "very helpful" or "somewhat helpful") (on file with the Commission). *See also* Appendix F (*Mystery Shopper Survey and Parent-Child Survey*).

66. *See* Appendix F.

67. *See* Gallup Org., *Children and Violence* (conducted June 1999), www.gallup.com/poll/indicators/indchild_violence.asp (visited June 25, 2000). Five hundred people were asked: "Do you believe that the producers of the following entertainment media do or do not provide adults with enough information about the violence content to make decisions about what is appropriate for children? How about movies? Video or computer games? Lyrics to popular music on CDs, tapes or radio? Television programming?"

68. *MPAA Advertising Handbook, supra* note 46, at i. As noted above, there is one exception to this rule: some trailers are specifically approved only for restricted audiences and can only be shown at either R- or NC-17-rated features. *Id.* at 16-17.

69. "'How a movie is marketed – that is not within the rating system,' Valenti said. Besides, he added, 'how can you monitor every piece of advertising that goes out? You can't monitor every marketing program.'" Denise Gellene, *Marketers Target Schools by Offering Facts and Features*, L.A. Times, June 4, 1998, at D1.

70. *See* Walter E. Dellinger & Charles Fried, A Paper Presented to the Federal Trade Commission on behalf of Sony Pictures Entertainment Inc., Metro-Goldwyn-Mayer Studios, Inc., Miramax Films, Paramount Pictures Corporation, Twentieth Century Fox Film Corporation, Universal City Studios, Inc., Warner Bros., and Walt Disney Pictures and Television, *First Amendment Implications of the Federal Trade Commission's Inquiry into the Marketing to Minors of Motion Pictures That Depict Violence* (Jan. 19, 2000).

71. *Id.* at 3-4.

72. For those theaters that do not explicitly state such a policy in their operating manuals, the Commission has inferred such a policy based upon an analysis of trailer placement memoranda. Only one theater has a written policy of limiting trailers to similarly or more restrictively rated features, *i.e.*, trailers for R-rated movies only with R-rated features, trailers for PG-13-rated movies with R or PG-13 features, etc. Trailer reports from this theater show, however, that the policy is not enforced.

73. The analysis of motion picture marketing that follows relates to the marketing plans for the domestic theatrical release of the movies the Commission examined. Only a handful of movies that the Commission examined had their home video release supported with a major marketing effort, and even these were much smaller than the enormous theatrical campaign. Thus, an examination of the marketing materials for home video release yielded no significant information not contained in a film's theatrical marketing campaign.

74. A recent analysis noted that in 1998 and 1999, television advertising consumed approximately 75% of all spending by the major studios for traditional media advertising, *i.e.*, television, radio, magazine, newspaper, and outdoor. Michael Burgi, *Where the Money Went*, The Hollywood Reporter, May 16-22, 2000, at S-8.

75. The 12-17 audience is critical to the motion picture industry. MPAA studies show that in 1998, children 12-17 accounted for 17% of the total movie-going audience (although they comprised less than 10% of the population) and that 49% of teenagers describe themselves as frequent moviegoers, *i.e.*, at least once a month. ***NATO 1999-2000 Encyclopedia of Exhibition*** 362, 364; ***Self-Regulation in the Alcohol Industry, supra*** note 18, at 9 (citing Bureau of the Census, U.S. Department of Commerce, PPL-91, Appendix A: Resident Population – Estimates by Age, Sex, Race and Hispanic Origin (Aug. 1998)). One study conducted by a studio in 1999 noted that in the next five years, teens would overtake the "boomers" as the leading movie ticket buyers.

76. All of the 44 R-rated films the Commission selected for its review were promoted and advertised in media outlets where those under 17 comprise a substantial part (*i.e.*, 20% or more) of the audience. For example, all of the films advertised heavily on MTV and on other programming popular with 12- to 17-year-olds. ***See*** Appendix I (***Television, Print, and Online Demographics***). In deciding which R-rated films' marketing campaigns were ***targeted to*** underage audiences, however, the Commission gave the studios the benefit of any doubt that they were not targeting children under 17. With this in mind, it appeared that the overall marketing approach for nine of the 44 R-rated films was less aggressive toward those under 17 than the other 35 films. Thus, even though these nine films were marketed in such a way that those under 17 were likely to be drawn to them, the Commission has declined to conclude that they were actually targeted to children under 17.

77. Eight of nine studios submitted material containing express statements that children under 17 were part of the target audience for an R-rated film.

78. Examples: "Target Audience: The primary target audience is Adults 18-49; The secondary target audience is People 12-24"; and "Target Audience: Primary, People 15-24 (Female Skew)."

79. The one studio that did not submit documents containing express statements that those under 17 were part of the target audience had six films that fell within this second category.

80. For these films, the percentage of the audience under 17 varied widely, from the single digits to a high of close to 50%. For example, for one R-rated film, trailer and TV commercial test demographics included 25% of the test group being 12-14 and another 25% being 15-17. Tests on five TV commercials for another film were conducted among 1800 people, where 16%-17% of the audience was 12-14 and another 16%-17% was 15-17. Forty-six percent of a recruited audience for one screening of another R-rated film was age 17 or younger.

81. A preliminary research plan for a sequel film stated:

> Since the bulk of the audience were moviegoers between 12-24, it is suggested that the sample be comprised mostly of 12 to 24 year olds, half between 12 and 17, and half between 18 and 24. Although the original movie was "R" rated and the sequel will also be "R" rated, there is evidence to suggest that attendance at

> the original move [sic] dipped down to the age of 10. Therefore, it seems to make sense to interview 10 to 11 year olds as well. In addition, we will survey African-American and Latino moviegoers between the ages of 10 and 24.

82. In studio media plans, demographic information on younger children is usually expressed in terms of children ages 6-11 and demographic information on teenagers is usually represented in terms of those ages 12-17. Accordingly, the Commission chose to analyze PG-13 films using age 11 as the cut-off instead of age 12 to determine if the films were being marketed to those under the age designation in the rating. This does not mean that children 11 and under were the only target audience or even the primary target audience for these nine films. For these films, however, children 11 and under were at least part of the target audience.

83. *See* Appendix I.

84. For example, a regional promotional report for one movie referred to promotional spots during a local station's airing of *Buffy the Vampire Slayer*, *Dawson's Creek*, "and other teen-oriented programming."

85. Examples of network and nationally syndicated shows most used by the films explicitly targeting those under 17 include *The Simpsons*, *Buffy the Vampire Slayer*, *Dawson's Creek*, *Xena: Warrior Princess*, *Hercules*, and professional wrestling shows such as *WWF Smackdown*.

The president of marketing for New Line Cinema was recently quoted as saying that the company advertised on *Buffy the Vampire Slayer* specifically to reach 13- to 17-year-old girls. *See* Cindy Mulkern, *Target Practice,* The Hollywood Reporter, May 16-22, 2000, at S-3, S-4. Although the film discussed in that article was rated PG-13, it highlights the audience the studios try to reach by advertising on *Buffy the Vampire Slayer.*

86. As one media plan stated: "Spot TV was used heavily throughout the campaign to capitalize on its ability to reach Teens in Early Fringe, Access, and during the Weekends." This same plan also noted how Spot TV advertising could be used to evade some network restrictions on advertising R-rated movies on certain shows: "Prime programs that could not be cleared in network due to the 'R' rating were purchased in Spot TV instead (*Simpsons, TGIF*)."

87. One studio document notes that 55% of MTV's audience is 12-24. *See also infra* note 175.

88. For one R-rated movie, 309 of 889 total cable commercials aired on MTV, more than twice the number of any other cable network. Another R-rated movie from a different studio targeting teens achieved almost two thirds of its cable audience exposure through MTV. Similar numbers can be found in marketing plans for movies made by other studios.

After MTV, the other main cable vehicles used most frequently to advertise R-rated movies to those under 17 include BET, The Box, and Comedy Central. In addition, violent R-rated science-fiction movies tended to advertise heavily on the Sci-Fi Channel. Select programming on USA, TNT, and TBS, such as professional wrestling and *Saved by the Bell,* were also consistently used to advertise to audiences under 17.

89. *See* Appendix I.

At least one studio was thwarted in its attempt to market a PG-13 film to children 6-11 on Nickelodeon, when the network concluded that it would not be appropriate to air advertisements for that film because the Nickelodeon audience was mostly children under 12 and the film contained situations not seen on Nickelodeon, including several gun battles, a couple of fight sequences, and some devastating bomb blasts (in addition to strong language and sexual suggestion). The studio's advertising agency noted that it had advanced several justifications for showing the ads, including: "This film needs the audience Nickelodeon provides to be successful."

90. Data provided by Nielsen Media Research show that MTV programming is popular among 6- to 11-year-olds. *See* Appendix I.

91. To the contrary, one studio instructed its staff to purchase Spot TV advertising for an R-rated movie on a particular show only if the composition of children 6-11 was low.

92. Both the studios and the theaters submitted copies of numerous trailer check reports.

93. *NATO "G" Trailer Resolution* (Apr. 1989). Two years later, NATO reminded its members "to be sensitive to the thematic content of teaser trailers when exhibited with feature films, especially those films which are suitable for general viewing," and encouraged the studios to "[exercise] good judgment and sensitivity in determining which teaser trailers to attach to feature films, being guided not only by considerations of the rating of the films in question, but also their thematic content and the likely audience demographics involved." *NATO Teaser Trailer Resolution* (Nov. 1991).

94. Trailer reports received from both the studios and the theaters confirm that this was fairly routine. For example, one studio attached the trailer for an R-rated film to its PG-13 feature that targeted children under 11.

95. All rating reasons are from www.filmratings.com.

96. For example, another studio distributed free passes to its R-rated movie at local high schools, distributed flyers and posters to youth groups such as the Camp Fire Boys & Girls, and sponsored a movie-related contest at what it termed a "very popular teen-hangout." Other areas for retail distribution or placement of promotional items targeting teens included pizza parlors, arcades, record stores, skating or skate boarding shops, and comic book stores.

97. The Commission found little evidence of toys being used to market R-rated films – in contrast to PG-13 films – to teenagers or pre-teens. Although some action figures are based on characters in R-rated movies, most of these are marketed to adult toy collectors. Some, such as action figures based on characters from the film *The Matrix*, state on the packaging that they are

intended for adult collectors.

98. One marketing plan for a PG-13 film explicitly targeted boys 4-14 with movie-related retail merchandise, including toys sold at Toys "R" Us and Kmart. These items were scheduled to hit retail shelves simultaneously with the launch of the media blitz for the film, approximately three weeks before the film's release. Other retail items licensed from this film include Halloween costumes and masks. Because the Halloween costumes and masks were not scheduled to be released until three months after the film's theatrical release and no other details were given in the marketing plan, it does not appear that this was part of a campaign to generate interest in the film among children 11 and younger; instead, it appears to be a method of capitalizing on the interest already generated.

The marketing plan for a film from another studio included a toy give-away with every Burger King Kids Meal. Because of the nature of the film, a card at the Burger King counter offered parents an alternative toy: "While Kids Meal toys are suitable for children of all ages, [name of film] may contain material that is inappropriate for younger children. Parents should consult movie rating. An alternative toy is available upon request."

A third studio featured a children's meal with toy premiums at Taco Bell, which contributed a multi-million dollar advertising campaign that significantly increased interest in the film among young children.

99. Some films examined did not use radio advertising. For other films, the information on radio advertising is not complete enough to make a determination as to whether it was used to market to those under 17.

100. One studio's plans routinely cited as the rationale for choosing radio its "Good delivery of teens." This studio did not even attempt to use radio to try to attract those over 17 to two of those films, noting, "The daypart mix for spot radio is designed to utilize the most effective dayparts against a key demo of P12-17." A second studio made repeated references to purchasing advertising on teen radio stations. Three other studios purchased radio advertising based on a station's ratings among people aged 12-24.

101. *See* Appendix I.

102. "Planet Report Inc. is the nation's largest provider of corporately sponsored bookmarks and newsposters. Distributing [sic] over 100 million bookmarks in 95% of the nation's schools." *Schools Help Boost Rugrats' Box Office Success*, PR Newswire, Nov. 23, 1998. "Planet Report's ad sponsored newsposters reach an audience of 12 million grade school and high school students each day of the school year." *35,000 Teens Speak Out on Everything from Anti-Smoking Ads to Nike*, PR Newswire, July 17, 1998. "[T]he Planet Report Campaign [is] an informational poster serviced to 41,000 high schools." Carrie Bell, *RCA Looks Beyond Top 40 Base for Sweden's Robyn*, 109 Billboard, Nov. 8, 1997, at 5. In addition, studio marketing material refers to Planet Report's circulation as 8,000. Planet Report indicated to the Commission that studios have stopped using its services following the Columbine shootings.

Planet Report also has a separate circulation to elementary schools where it will advertise PG-13-rated films. While several PG-13-rated films noted the use of Planet Report in their media plans, they did not indicate whether it was the high school or elementary school circulation.

103. *See* Frank Green, *Fast and Deep; Tabloid Gives Teens Hard-Nosed News*, San Diego Trib., Apr. 11, 1991, at D-1 ("Most of the 3,500 instructors who use Fast Times to teach current events make it mandatory reading in class.").

104. Examples of sites specifically mentioned to appeal to teens are mtv.com, gamespot.com, happypuppy.com, glossy.com (targeting teenage girls), ubl.com (listed in a marketing plan as the number two teen site after mtv.com), bolt.com, and chickclick.com. Many of these sites were identical to the sites used by the electronic game industry to promote M-rated games to teens, including interactive game sites. *See* Appendix I.

105. For example, eonline.com is an independent site with links to movie sites; however, horroronline.com, a site devoted to horror films that also provides trailer downloads, is operated by Universal Studios.

106. Under the motion picture industry's self-regulatory system, a film's Web site, like its other advertising, should be limited to what the Advertising Administration determines is acceptable for general audiences. The ready accessibility of restricted trailers on Web sites would thus appear to be inconsistent with the MPAA's standards. As technology advances and movies may be downloaded in their entirety from the Internet on home computers, restricted materials may become even more accessible to children.

107. The definition of the R-rating category states that "under 17 requires accompanying parent or adult guardian." This raises two issues for the box office: (1) how to define "accompanying"; and (2) how to define "parent or adult guardian" to determine what categories of adults other than parents (such as the parents of a child's friends) are acceptable guardians.

Each theater has adopted its own policies to answer these questions. Four of the eight major theater chains contacted interpret "accompany" to mean that the underage patron must be physically accompanied, for the duration of the film, by a parent or guardian; in other words, the adult must view the film with the child. Strict enforcement of this policy has caused these theaters a degree of difficulty, as some parents complain that their consent should be sufficient and that requiring parents to accompany their child is a ploy to sell more tickets. Indeed, the other four chains allow the parent or guardian to purchase the ticket and not actually accompany the underage patron into the auditorium.

Nor do the major chains have a uniform interpretation of "parent or adult guardian." Three of the chains interpret the restriction to limit admission to underage moviegoers who are accompanied by the child's actual parent or legal guardian, and will not allow admission to underage patrons who are accompanied by a sibling or friend who meets the age requirement. The others interpret parent or adult guardian to be any adult over the age of 18 or 21, regardless of the adult's relationship to the underage patron.

108. NATO, *Theatre Owners Announce National Movie Ratings Enforcement and Education Campaign*, June 8, 1999 (press release).

109. NATO provides its members with a training video concerning the rating system and how it can best be enforced.

110. Doing so would make it easier and more efficient to restrict access to an entire section of the multiplex, rather than individual auditoriums.

111. This discussion of home videos encompasses sales and rentals of movies that are available on digital video discs (DVDs), which will account for a growing proportion of home movies in the future and may become the successor technology to movies in VHS format. *See* Appendix D, text accompanying notes 11, 30-31.

112. *See* Blockbuster Membership Application (form dated Mar. 15, 2000). The form states that, "You must be 18 years of age or older for membership," and includes a statement of Blockbuster's policy:

> Blockbuster policy is to refuse rental or sale of "R" rated movies, "M" rated games or other product designated as restricted to youths under the age of 17 unless parental consent is given. If you wish to allow youths under the age of 17 to rent or purchase restricted product you MUST check the box below, otherwise it is Blockbuster policy to refuse rentals and sales to youths as stated above.

Hollywood Video requires members to be at least 18 years old and to present two forms of identification, one of which must be a driver's license or state-issued ID. *See* www.hollywoodvideo.com/stores/facts.htm (visited Aug. 3, 2000).

113. *See* Membership Application dated 3/15/2000.

114. *See supra* note 112.

115. This retailer, which requires that members be 18 or older to open a rental account, reports that most of its store managers have policies against selling adult pornographic videos and magazines to minors, but do not appear to have policies restricting the sale or rental of R-rated movies to minors. Only a few managers reported that they have express policies against selling or renting R-rated movies to minors. In particular, one supervisor of two California stores informed his employees that: "Since the shooting in Colorado, there have been a lot of senators and even the President talking about legislation for the sale of music, movies, and games. With this said, we need to do our part and enforce that no minor purchase anything they should not . . . [This] means no one under 17 should be renting or purchasing a rated R movie and 18 for Mature 18+ or X rated."

116. In addition to analyzing the online policies of the seven retailers with "bricks and mortar" stores that also sell online, the Commission requested information from two exclusively online retailers of home videos.

117. In addition to displaying the MPAA rating on the product information page, Hollywood Video's e-commerce arm, www.reel.com, provides detailed information about each movie through its "Movie Anatomy" feature, which rates movies from 1-10 (with 10 the highest) on 14 elements including sex, violence, action, humor, and family appeal, based on typical audience responses.

118. *See RIAA Parent's Page-Background* [hereinafter *RIAA Parent's Background*], www.riaa.com/Parents-Advisory-1.cfm (visited July 24, 2000).

119. RIAA is a trade association that represents the creators, manufacturers, and distributors of over 90% of the sound recordings produced and sold in the United States. *See RIAA About Us-Who We Are*, www.riaa. com/About-Who.cfm (visited July 24, 2000). The RIAA first announced its labeling system on behalf of many of its larger members in 1985. *See* Parents' Music Resource Center, *PMRC, PTA and RIAA Agree on Recorded Lyrics Identification*, Nov. 1, 1985 (press release). The two parents' groups that pushed the industry to provide information about recordings with explicit lyrics were the Parents' Music Resource Center ("PMRC") and the National Parent Teacher Association ("NPTA"). The PMRC was founded in 1985 to promote a consumer labeling plan for music recordings that contain explicit sexual or violent references. *See* William Raspberry, *Filth on the Air*, Wash. Post, June 19, 1985, at A21. *See* Appendix D for a detailed history of the recording industry's parental advisory labeling program.

120. *See RIAA Parent's Background*, *supra* note 118.

121. *See* Memorandum from the RIAA to the Federal Trade Commission, *The Voluntary Parental Advisory Program: What It Is and What It Is Not* [hereinafter *RIAA Parental Advisory Program Memorandum*] (July 2000), at 8. In 1996, the RIAA and the National Association of Recording Merchandisers ("NARM") increased their efforts to educate consumers about the parental advisory label, providing posters and other display materials to music retailers and wholesalers to increase public awareness of the labeling system. *See The RIAA Bolsters Its Parental Advisory*, www.riaa.com/News_Story.cfm?=106 (visited July 24, 2000); *Parental Advisory Merchandise Order Form* [hereinafter *Order Form*], www.narm.com/programs/merch/parent.htm (visited July 24, 2000). This point-of-purchase material, printed in deep yellow, explains to consumers that "The Parental Advisory is a notice to parents that recordings identified by this logo may contain strong language or depictions of violence, sex, or substance abuse. *Id.* In addition, NARM makes available another version of this material containing the additional language, "This store reserves the right to restrict sales to children of product carrying the Parental Advisory." *Id.* NARM provides these posters free of charge to its retailers, charging only for shipping and handling.

Individual recording companies have relied on the RIAA and NARM to educate the public about this labeling program and have not taken any independent steps toward consumer education. In May 2000, the RIAA highlighted the labeling program on its revised Web site and, on June 8, 2000, joined with the MPAA and ESRB in announcing a Web site, www.parentalguide.org, that provides links to the different industry associations involved with rating or labeling systems.

122. *See RIAA Parent's Background, supra* note 118.

123. Two of the major recording companies that submitted information to the Commission emphasized that they are committed to using the advisory as a means of informing parents about recordings with explicit content. Another recording company noted that "[i]t is not in [the company's] interest to send unstickered product to outlets [such as Wal-Mart or Kmart that do not sell labeled recordings] only to have it sent back because the outlets find it to contain objectionable content. Accordingly, [the company] is "generally conservative when making the stickering decision so as to avoid displeasing its retailers."

124. This Report uses the term "labeled recordings" – also known as "stickered recordings" – to indicate a recording with a parental advisory label. In addition, to avoid confusion, this Report uses the term "recording companies" rather than the common industry term "record label" to refer to the music recording firms themselves.

125. The amount of marketing materials provided to the Commission varied substantially from recording to recording. For most recordings (47 of 55), the companies submitted materials showing their plans to promote a specific recording in a variety of media (*e.g.*, print, television, the Internet, and street marketing). For eight of the recordings, however, the companies provided less comprehensive marketing information, materials that usually discussed promotions in only one or two media.

126. The Commission initially sought to focus its inquiry only on recordings that received an advisory label because they contained *violent* lyrics (*e.g.*, excluding from review recordings labeled only for use of expletives or sexual references). Because the recording companies do not keep track of the reasons why any particular recording was labeled, however, all companies agreed instead to produce information about the top-selling recordings that received the advisory label *for any reason* (language or references to sex, violence, or substance use). The Commission did not attempt to evaluate which recordings contained violent lyrics.

127. Moreover, common sense suggests that the "parental" advisory is meant for parents of minor children.

128. *See RIAA Parental Advisory Program Memorandum*, supra note 121, at 16.

129. One of the companies stated:

> The decision whether to sticker an album is made at the [recording] label level. The procedures followed to make that decision differ to some degree from label to label. In general, during the process of listening to or reviewing lyrics from an

> album, a determination is made by one or more individuals as to whether stickering is appropriate.

130. A recent New York Times article referred to one or more of the music companies using "review boards" to analyze the explicit content of each music recording released. *See* Neil Strauss, *Recording Industry's Strictest Censor Is Itself*, N.Y. Times, Aug. 1, 2000, at A1. Neither the RIAA nor the individual recording companies disclosed the existence of such review boards in their submissions to the Commission, although, as suggested in Section VIII below, standardized labeling procedures would help to provide a self-regulatory program in which the public could have confidence.

131. As one recording company explained:

> In determining whether to sticker a particular album . . . record labels initially examine and evaluate the use of expletives in the album. Once it is determined that the use of expletives in a song on an album warrants a sticker, the inquiry ends and the record labels do not further proceed with the inquiry with respect to the remainder of the album.

Although this company also pointed out that "since the decision to sticker is made on a case-by-case basis and the basis for each decision to sticker is not memorialized, it is possible that in some cases particular individuals might exercise their editorial judgments to sticker a recording for reasons other than use of expletives."

132. This company stated:

> Most often the decision [to label] is made on the basis of explicit language, i.e., 'dirty words.' Of course, once that decision is made, there is no need to analyze further whether the album contains any other form of explicit content because the RIAA system involves a single sticker that goes on 'explicit' records – there is no 'language' sticker, 'sexual content' sticker, 'violent content' sticker, or 'reference to drug use' sticker.

133. *RIAA Parent's Page-Parental Advisory Label, Usage Guidelines for Audio and Music Video Product* [hereinafter *RIAA Parent's Usage Guidelines*], www.riaa.com/Parents-Advisory-6.cfm (visited July 24, 2000).

134. *Id.* None of the companies provided any additional written policies or procedures, aside from the RIAA guidelines, regarding the format of the label. One company stated that it follows the RIAA guidelines, unless the cover artwork will be adversely affected. Another company reported that the size, format, and placement of the logo "is made entirely on a case by case basis, depending in large part on the artwork presented on the CD's cover and the intent to make the parental advisory visible."

135.

Company	# of CDs	PAL on Packaging		Removable Sticker		Smaller Size		Fully Comply	
		#	%	#	%	#	%	#	%
A	10	7	70%	3	30%	3	30%	4	40%
B	12	11	92%	1	8%	3	25%	8	67%
C	11	11	100%	0	0%	1	9%	10	91%
D	9	0	0%	9	100%	7	78%	0*	0%
E	13	12	92%	1	8%	8	62%	5	38%
TOTAL	55	41	75%	14	25%	22	39%	27	50%

*This company produced the marketing materials for nine labeled CDs, along with copies of the CDs. All nine of these CDs placed the advisory on a removable sticker rather than incorporating the label into the CD packaging. However, Commission staff has observed other labeled CDs distributed by this company that did incorporate the advisory into the CD's packaging.

136. The Commission examined the advisory label on 25 top-selling explicit recordings, as determined by Billboard magazine for the week of July 15, 2000. Only nine of the 25 advisories (36%) fully complied with the RIAA-suggested guidelines. Thirteen of the 25 advisories (52%) were smaller than the recommended size; four of the advisories (16%) were removable stickers rather than a logo that was a permanent part of the packaging. Three of the advisories (12%) stated "Explicit Lyrics" rather than "Explicit Content."

137. Forty-five of the 55 labeled recordings provided by the companies were also available in edited versions. Other companies noted that, in addition to the edited version available for sale, they also may create separate edited versions of one or more songs suitable for radio play, listening stations, or in-store play.

138. Two major retailers, Kmart and Wal-Mart, do not carry any explicit-content labeled recordings, stocking only the edited versions of these recordings. *See RIAA Parental Advisory Program Memorandum*, supra note 121, at 15. Several other major retailers stock both the explicit and the edited versions, especially in their online stores.

139. The companies provided unit sales information to the Commission for 25 recordings with both explicit and edited versions. As a percentage of total unit sales, explicit versions accounted for the vast majority of sales, ranging from a high of 99.5% to a low of 78%. For 19 of the 25 recordings (78%), sales of the explicit version accounted for 90% or more of total unit sales.

140. Another company noted:

> [It] typically will produce an edited version of a stickered recording if a large volume of the stickered version is sold and demand is anticipated for an edited

> version. In such cases, the applicable record label will solicit the artist's interest in producing an edited version of the stickered album, and if the artist is willing to create an edited version, the applicable record label will assist the artist in the creation of such version.

A third company stated that the "decision of whether to produce an edited version of a stickered recording depends on a variety of factors," including whether an edited version is important for promotions, sales, or radio airplay.

141. *See also* Anthony DeCurtis, *Eminem's Hate Rhymes*, Rolling Stone, Aug. 3, 2000, at 17-18 (stating that "[t]he clean version of the album – which carries no parental-advisory label and is sold at Wal-Mart and Kmart – bleeps the profanity, drug references and most of the violence from the lyrics; the homophobic and misogynist content remains intact.")

142. One company noted that "where one song cannot be sufficiently edited . . . [it may] be removed completely to create an edited version."

143. In at least one of the CDs submitted to the Commission, the packaging for both the explicit and edited versions showed the same image of a figure dripping with blood.

144. *See* www.riaa.com/Parents-Intro.cfm (visited July 24, 2000).

145. In its policy statement on the *Impact of Music Lyrics and Music Videos on Children and Youth*, 96 Pediatrics 1219 (Dec. 1996), www.aap.org/policy/01219.html (visited July 31, 2000), the American Academy of Pediatrics advocates that "[t]he public, and parents in particular, should be made aware of sexually explicit, drug-oriented, or violent lyrics on compact discs, tapes, music videos, and the Internet. The music industry should develop and apply a system of specific content-labeling of music regarding violence, sex, drugs, or offensive lyrics." *Id.* The National PTA also has recommended a rating system for music recordings and "urge[d] recording companies to put a label on record, tape, and cassette covers rating the material contained within and require that such a rating label would read 'profanity,' 'sex,' 'violence' or 'vulgarity,' if applicable." NPTA Resolution reviewed by the 1998 Conventions Resolutions Committee, page XIV.2. Barbara Wyatt, the president of the Parents' Music Resource Center, has testified that, "There are standardized labels, but no standards," and advocates making the "labels more specific as to content, similar to television ratings." *Labels and Lyrics: Do Parental Advisory Labels Inform Consumers and Parents?: Hearing Before the Senate Comm. on Commerce, Science, and Transp.*, 105th Cong. 59, 60 (1998). *See also* Appendix G Part III.

146. The parental advisory label may appear on an album with only a few expletives and no other explicit content, as well as on an album with repeated references to graphic violence and/or sex.

147. *See RIAA Parental Advisory Program Memorandum*, supra note 121 at 9.

148. Studies show that parents' concerns vary with children's age. *See* discussion in Appendix B Part II (citing *Media in the Home 2000*, *supra* note 15, at 41 and Roper Starch Worldwide, *1999 Roper Youth Report* at 47 (1999)).

149. According to consumer research conducted by the industry, parents had difficulty understanding the lyrics on many rap and hard rock recordings without a printed lyric sheet. Once parents became aware of the lyrics from reading the lyric sheets, many expressed revulsion and exhibited a greater concern about the music their children were buying.

150. *See RIAA Parent's Usage Guidelines*, *supra* note 133.

151. *See* Appendix F.

152. *Id.*

153. *See Children and Violence*, *supra* note 67.

154. *Id.* The poll indicates that 84% of parents polled believed that the amount of violence that children are exposed to in popular music is a moderately serious to extremely serious problem.

155. MP3, which stands for Moving Pictures Experts Group Level 3, makes high-speed transmission of CD-quality music possible by compressing computer files to almost one-tenth their original size. *See MP3 Revolutionizing Music Business*, www.cnn.com/TECH/computing/special/mp3 (visited Apr. 7, 2000); Rob Walker, *Between Rock and a Hard Drive,* N.Y. Times Mag., Apr. 23, 2000, at 74-75. It is currently the most widely accepted standard for digital audio – with close to a billion MP3 files traveling the Internet in 1999 – but has been criticized by the recording industry as being unable to protect against unlimited copying, thereby threatening artists' copyrights. *See* Gordon Masson, *How Do Net Pirates Distribute Music?*, Billboard, Apr. 1, 2000, at 104, 104; Walker, *supra*, at 77.

156. Although digital music can be transferred in any number of ways, one of the most successful to date has been through a program called Napster, which has allowed any user's MP3 files to be part of a worldwide database that is available to any other user. *See* Noah Robischon, *Free for All*, Entertainment Wkly., Mar. 31, 2000, at 72, 72; Ed Christman & Brian Garrity, *Web Worries: Downloads, Customer Info*, Billboard, Mar. 11, 2000, at 1, 92. Approximately 13 million consumers have used Napster and similar programs to download 500 million songs. *See* David Segal, *An Upside to Music Downloads*, Wash. Post, June 22, 2000, at A1. Napster has been so popular among college students that many universities have banned it because it is such a drain on their computing resources. *See* Robischon, *supra*, at 72; Walker, *supra* note 155, at 77. A similar product is Gnutella, an openly developed program that provides a decentralized method of sharing files. *See* Segal, *supra*, at A1. The ease with which Napster and Gnutella have made almost any song available, free, to anyone has led some to predict the end of the music business as it now exists. *See* Don Clark & Martin Peers, *Music Companies Fight Back, Hoping Downloads for Fees Can Prove as Popular as Free*, Wall St. J., June 20, 2000, at B1 (quoting Avram Miller, former Intel Corp. Vice President); Ann Donahue, *MP3 Search Site: Piracy Made*

Easy, Variety, Mar. 20-26, 2000, at 40, 40. As one Internet retailer put it: "Kids don't look at music as something they buy; it is something they get." Christman & Garrity, *supra*, at 92 (quoting Jason Fiber, Vice President of digital strategies for Wherehouse Music/Checkout.com).

157. According to a recent report published by the Annenberg Public Policy Center, "71% of households with kids 8-17 now have computers and 67% of those households connect to the Internet. In all, then, 48% of U.S. households with kids 8-17 have online connections." Joseph Turow & Lilach Nir, *The Internet and the Family 2000: The View From Parents/The View from Kids* [hereinafter *The Internet and the Family 2000*] 7 (Annenberg Pub. Policy Ctr. U. Pennsylvania 2000) (citing Roper Reports and the 1999 Current Population Survey (CPS)). In addition, according to the 1999 Roper Youth Report, 26% of 8- to 17-year-olds polled use the Internet to sample and listen to music, up from 17% in 1998. *See 1999 Roper Youth Report, supra* note 148, at 167 (1999). Commission research also showed a high use of the Internet by children surveyed for listening to music (65%) and downloading music (22%).

Forecasters have predicted that in the next two years, more than 16 million teens will be on the Internet, where they will spend $1.2 billion on a variety of products, the most popular of which will be music. *See* Michiyo Yamada, *Market Spotlight: Today's Teens, Tomorrow's Net Consumers*, Indus. Standard, June 14, 1999, www.thestandard.com/research/metrics/display/0,2799,9901,00.html (visited Aug. 3, 2000). By 2003, 14% of music is expected to be sold online. *See* Maryann Jones Thompson, *Tracking the Internet Economy: 100 Numbers You Need to Know*, Indus. Standard, Sept. 13, 1999, www.thestandard.com/research/metrics/display/0,2799,9801,00.html (visited Aug. 3, 2000).

158. Believing that digital distribution of music is inevitable, many recording companies have tried to create their own system of digital music distribution so that they can maintain control over, and profit from, their music. *See* Clark & Peers, *supra* note 156, at B1; Michael Grebb, *Labels Jump On Digital Rights Bandwagon*, Billboard, Mar. 11, 1999, at 67, 67. A vice-president at BMG states: "Longterm, digital distribution will only expand revenues for the music business." *Id.* at 77 (quoting Kevin Conroy, senior vice president of worldwide marketing and new technology). Sony, EMI, and Universal recently established their own digital music delivery mechanisms. *See* Eileen Fitzpatrick, *ARTISTdirect Quietly Buys Mjuice, Which May Benefit Major Labels*, Billboard, Mar. 18, 2000, at 6, 6; Martyn Williams, *Sony Establishes Online Music Retailing Venture*, Apr. 7, 2000, www.cnn.com/2000/TECH/computing/04/07/sonet.music.idg/index.html (visited Aug. 3, 2000).

Some retailers even argue that the availability of free music downloads can be an effective marketing tool. *See* Christman & Garrity, *supra* note 156, at 92. At least one musician agrees: "We could care less about the older generation's need to keep doing business as usual. We care more about what our fans want, and our fans want music on the Internet." Don Waller, *Dr. Dre Joins Fray, Files Napster Suit*, Apr. 26, 2000 (quoting Fred Durst, lead singer of Limp Bizkit), www.variety.com/article.asp?articleID=111778093 (visited Aug. 17, 2000).

In addition to developing their own delivery systems, the music industry has challenged many alternative delivery systems in court. The RIAA, along with some artists, sued Napster alleging that it fosters music piracy. *See id.*; Walker, *supra* note 155, at 77. That litigation is ongoing. Recording companies also sued MP3.com over a digital music storage system run on MP3.com's Web site and won an initial victory when a district court judge ruled that part of MP3.com's system violated copyright laws. *See* Walker, *supra* note 155, at 77; David Segal, *MP3.com Is Loser in Copyright Case*, Wash. Post, Apr. 29, 2000, at E1. MP3.com has settled the lawsuit with three of the record labels, agreeing to pay damages and license fees for any albums used; discussions between the remaining recording companies and music publishers are continuing. *See* Clark & Peers, *supra* note 156, at B1 and sidebar at B4; *MP3, EMI Reach Truce*, July 28, 2000, cnnfn.cnn.com/2000/07/28/technology/emi_mp3 (visited Aug. 17, 2000).

159. *See RIAA Parental Advisory Program Memorandum*, supra note 121, at 2.

160. As one company noted, the advisory label "is primarily a point of sale device designed to assist parents, not an advertising device." This company also stated that print and television advertisements "generally do not include the sticker or any other indication that the explicit version of the album itself contains explicit content."

161. Most of the recording companies have not independently taken steps to ensure that the explicit-content label appears in advertising for their labeled CDs. One company states that its divisions "endeavor to make certain that recordings containing explicit content are not advertised or marketed without displaying the [advisory label]."

162. Like the recording companies, these retailers have not instituted policies or guidelines for the use of the advisory label in advertising for labeled albums. Instead, they depend upon the recording companies to inform them which titles contain explicit lyrics and to provide the pictures of the recordings for use in their ads. The retailers do not monitor whether such artwork contains the advisory label or make efforts to obtain artwork with the label. As a result, the retailer advertising submitted only sometimes shows the advisory. Typical retailer ads, placed in magazines or newspapers, or on the Internet, often display reduced versions of the cover art (a picture of the CD cover) for numerous labeled recordings.

163. The Commission examined advertisements for recordings placed in *Blaze, GamePro, Electronic Game Monthly, Metal Edge, Right On, Seventeen, Teen People, Thrasher*, and *Vibe*. *See* Appendix I.

164. A review of 39 artist Web sites or Web pages shows that only four of the 39 sites examined provided the advisory label on the recording cover art in a readable form.

	YES		NO	
	#	%	#	%
Does the site contain album cover art?	**33**	85%	**6**	15%
Does the PAL appear on the cover art?	**15**	45%	**18**	55%
Is the PAL readable?	**4**	27%	**11**	73%
Are there audio clips?	**34**	87%	**5**	13%
Are there video clips?	**27**	69%	**12**	31%
Is the record offered for sale?	**29**	74%	**10**	26%
Is there other information about explicit content?	**14**	36%	**25**	64%
Are there age restrictions on listening or purchase?	**0**	0%	**39**	100%

See Appendix H. In addition, a separate examination of 14 artist Web sites also showed that 13 of the sites displayed photographs of the CD cover art, but only three of the 13 pictures also showed the advisory label. *Id.*

Moreover, a review of the Web sites of five major music retailers showed that while the advisory label appeared in promotions for explicit-content labeled recordings approximately 50% of the time, the advisory was almost never readable. The review showed, however, that several retailers make additional text disclosures that state "Explicit Content" to inform consumers about the content before they purchase the recording. *See* Appendix H.

165. *See* www.cashmoney-records.com.

166. *See* www.amazon.com.

167. *See* www.cdnow.com and www.twec.com. Another retailer uses a disclosure stating "clean" near the edited versions, but places no disclosure, such as "explicit," near the explicit versions that are also for sale. This approach may be confusing to consumers who would not necessarily understand that the version with no disclosure contained explicit lyrics.

168. Commission research indicates that 36% of the children ages 11-13 surveyed, and 74% of the children ages 14-16, decide which music to purchase. *See* Appendix F. Similarly, according to the 1999 Roper Youth Report, when buying CDs and pre-recorded music, 27% of children between the ages of 8 and 12, and 72% of teenagers between the ages of 13 and 17, make such purchasing decisions without consulting their parents. Also, in the Commission's undercover shopper survey, unaccompanied children ages 13-16 were able to buy explicit content recordings 85% of the time. *See* discussion *infra* Section V.C. and Appendix F.

169. According to one company, cooperative advertising involves the recording companies providing funding to their customers (the distributors, wholesalers, and retailers of recorded

music) for these entities to arrange advertising in a variety of media or to provide in-store promotional displays that feature a particular recording.

170. For example, one marketing plan states that "[t]he team is promoting heavily at the local high schools and colleges" and that "[c]olleges, high schools, and community centers are the focus off are [sic] attack." Another plan states, "We are approaching lifestyle and high school indie marketing companies to aid in awareness and visibility."

Two marketing plans discuss promoting labeled recordings at sporting apparel stores because of these stores' popularity with children under 17. One of these plans included distribution of a music video for a song on one of the explicit recordings to "Foot Action" stores because "Foot Action is a key marketing outlet for male rap music buyers. Nearly two thirds of the volume sold in these stores is bought by males teens [sic] ages 12-17 and rap music is ranked #1 as favorite music among this demographic." *See also infra* note 184.

Other marketing plans referred to placing ads for explicit recordings in "teen" magazines or television shows. One plan stated "We will service the album . . . in June to all teen and television urban shows."

171. For example, one company produced no marketing information identifying a target audience for any of its labeled recordings.

172. The companies did not provide any information about print advertising placement for six of the 55 labeled recordings.

173. The marketing documents submitted to the Commission discussed placing ads in numerous magazines that have a substantial or majority under-18 readership, including: *Blaze*, *Electronic Gaming Monthly*, *GamePro*, *Heckler*, *Hit Parader*, *Jump*, *Metal Edge*, *Right On!*, *Seventeen*, *Teen*, *Teen People*, *Thrasher*, *TransWorld Skateboarding*, *Vibe*, *Warp*, and *YM*. *See* Appendix I.

174. *See supra* note 163.

175. MTV and BET air music and related programming, such as music videos and events, interviews, documentaries, and news specials. The Box Music Network uses technology allowing the home audience to select music videos on a market-by-market basis.
"MTV targets viewers from the ages of 12 to 34" and "The Box Network targets viewers from the ages of 12 to 34." *See* Viacom Form 10-K [hereinafter *Viacom 10-K*], at I-3, for the year ending Dec. 31, 1999.

An advertisement for MTV states that for three years MTV has "been the #1 cable network for 12-24 year olds." *See* Advertising Age, May 22, 2000, at 49; *see also* Advertising Age, Apr. 3, 2000, at 25. Similarly, an advertisement for The Box states that it is the "#1 cable network for teens 12-17 VPVH in monday-sunday prime." The Hollywood Reporter Movies & the Media Special Issue, May 16-20, 2000, at S-21. Other demographic data provided to the Commission by two of the companies indicates that 42% of MTV's audience is between the ages of 12 and 17, and that 83% of the audience of The Box is between the ages of 12 and 34. *See also* Jeffrey D. Stanger & Natalia Gridina, *Media in the Home 1999: The Fourth Annual Survey of Parents and Children*, at 11 (Annenberg Pub. Policy Ctr. U. Pennsylvania (2000) (indicating that over 50% of children ages 10-17 watched MTV each year from 1996 through 1999)); Appendix I.

According to an interview with Curtis Gadson, Senior VP of Entertainment Programming for BET, the core BET audience is viewers between 12-34 and this group is its primary target. Barry Garron, *Novel Ideas,* Billboard/Hollywood Reporter, Apr. 25, 2000, S-10, at S-11. In addition, one of the recording companies stated the advertising that it placed for the explicit-content labeled recordings on BET reached an audience 12-24. Demographic information produced by another company indicates that during the 4:30 to 7:30 p.m. time slot on BET, 369 viewers per 1000 viewing households were between the ages of 12 to 17 and 359 viewers per 1000 viewing households were between the ages of 18 to 34. *See also* Appendix I.

VH-1, MTV's sister music cable channel, also shows music videos, but, in contrast, "presents music and related programming directed at an audience aged 25 to 44." Viacom 10-K, at I-5. Only two of the marketing plans for explicit-labeled recordings submitted to the Commission mentioned obtaining any exposure on VH-1.

176. Because almost all the marketing materials for explicit-labeled recordings referred to the placement of music videos on these channels, it would appear that the music videos, even if edited to remove some explicit content, play a key role in promoting the sale of explicit recordings to an under-17 audience. Neither MTV nor BET requires a disclosure on music videos that the song appears on a recording with explicit content. Nor did the Commission's monitoring indicate these channels restrict the airing of advertisements for labeled music recordings. In addition, some violent content may remain in the music videos shown on these channels. *See* Robert H. DuRant, *Violence and Weapon Carrying in Music Videos: A Content Analysis*, 151 Archives Pediatr. Adolesc. Med. 443-48 (May 1997).

177. The Commission reviewed advertising placed on MTV and BET during popular teen programs such as "Rap City" and "Total Request Live," which are shown during the after-school time slot. Four episodes of each program were reviewed and at least one advertisement for a labeled recording was shown during each episode.

178. *See* Appendix I. In addition, as reported by a popular news magazine, *The Simpsons* was among the top five favorite television shows for 12- to 15-year-old boys and girls, while *South Park* was among the top five favorite television shows of 12- to 15-year-old boys. Barbara Kantrowitz & Pat Wingert, *The Truth About Tweens*, Newsweek, Oct. 18, 1999, at 62 [hereinafter *The Truth About Tweens*].

179. As cited above, 48% of U.S. households with kids 8-17 have online connections. *See The Internet and the Family 2000, supra* note 157, at 6 (citing Roper Reports and the Current Population Study for 1999). This study also reports that 45% of the 13- to 17-year-olds and 21% of 10- to 12-year-olds polled described their frequency of Internet use as "a lot." *Id.* at 9., tbl.3.

One of the companies stated that it attempts to limit children's access to explicit materials on its Web sites by registering its sites with the Recreational Software Advisory Council. This company stated:

> This service allows the registering party to indicate the type of content contained on the site, for example, coarse language. Parents who have purchased parental control software, Net Nanny, can program it to block children's access to web sites registered as containing various categories of content. Alternatively, some labels within [the company] . . . regularly register sites directly with parental control companies.

180. *See supra* note 157.

181. Although two of the recording companies stated that they attempted to use only edited versions of the labeled recordings on their Web sites, the Commission found examples of audio samples from explicit recordings on these and other company Web sites. For example, in November 1999, an entire recording, labeled for explicit content, was made available for audio streaming online. Another marketing plan recognized the need to provide "clean" promotional materials to an underage segment of its audience, yet provided a Web site address that contained explicit material from a labeled recording. Another company promoted an explicit recording on an artist's Web site, featuring an online "After School Special," with audio and video broadcasts.

182. See Appendix I for information from PC Data Online Reports on the share of children ages 12 to 17 that visit: enimem.com, limpbizkit.com, korn.com, sonymusic.com, peeps.com, mtv.com, ubl.com, cdnow.com, launch.com, sonicnet.com, farmclub.com, and wallofsound.com.

183. One plan stated "an aggressive street marketing campaign will be key." Others plans similarly stated that "an aggressive street team campaign will be in effect to support and complement our set-up"; "We will plan to initiate an aggressive street marketing campaign to maximize visibility"; and "This type of guerilla marketing through these web sites will bring enormous visibility to . . . audio and video releases."

184. One marketing plan stated "[n]early two thirds" of the volume sold in Foot Action stores is bought by males ages 12-17 and rap music is ranked as the favorite music among this demographic. Another plan stated that "[e]xposure in their [Foot Action] stores will consist of: 2 pages in their magazine; 3 months video play on their in-store network; and a direct mail piece to 3.3 million of their consumers."

185. The Commission requested information from the following eight music retailers about their in-store and online practices: Amazon.com, Inc. (www.amazon.com, exclusively online), Best Buy Co., Inc. (Best Buy stores and www.bestbuy.com), CDNow, Inc. (www.cdnow.com, exclusively online), MTS, Inc. (Tower Records stores and www.towerrecords.com), Musicland Group, Inc. (includes several different retail stores and www.musicland.com, www.samgoody.com, www.mediaplay.com, www.oncue.com, www.suncoast.com), Target Stores, Inc. (Target stores and www.target.com), Trans World Entertainment Corp. (includes

several different retail stores and www.twec.com), and Wal-Mart Stores, Inc. (Wal-Mart stores and www.walmart.com).

186. *See* Appendix F.

187. *Id.*

188. Entertainment Software Rating Board, *Is This Computer or Video Game Right for Your Home? Check the Rating* (1999) (brochure for parents on computer and video games ratings) (on file with the Commission).

189. *See* Appendix D.

190. *Video Rating System: Hearings Before the Senate Subcomm. on Reg. and Gov't Info. and the Senate Subcomm. on Juv. Just.*, 103d Cong. (1994) (testimony of Jack Heistand, Chairman, Interactive Digital Software Association), *reprinted at* 1994 WL 394774. The Interactive Digital Software Association serves the business and public affairs needs of companies that publish video and computer games for video game consoles, personal computers, and the Internet. Members of the IDSA collectively accounted for more than 90% of the $6.1 billion in entertainment software sales in the United States in 1999. The IDSA offers services to entertainment software publishers including a global anti-piracy program, staging the Electronic Entertainment Expo trade show, business and consumer research, government relations, and First Amendment and intellectual property protection efforts. More information can be found at www.idsa.com.

191. An alternative rating system was developed by industry members headed by the Software Publishers Association (now the Software & Information Industry Association), a trade association representing developers, publishers, and distributors of personal computer software. In addition, a separate system for rating coin-operated video games was developed by the American Amusement Merchants Association and several other trade groups representing the coin-operated games industry. Both systems are described in Appendix D.

192. The ESRB also rates "finite" entertainment Web sites and Web pages, defined as sites "structured in a manner which allow for no interaction between the site and the user." Additionally, the ESRB, through its ESRB*i* Rating System, rates "Entertainment Interactive Arenas," defined as "free space areas that provide for user participation and/or feedback . . . ." The ESRB established the ESRB*i* Rating System in 1998 to address entertainment Web sites where content can change due to user input (like chat rooms, bulletin boards, or multi-player gaming sites). The ESRB*i* system is similar to the ESRB system, with requirements for the display of rating icons and rating descriptors on those sites, as well as a required disclosure that "the content of this site may change due to interactive exchanges." The "*i*" (interactive) icon is intended to caution visitors to the site that the user can exchange information with other users who may have differing or controversial opinions, or who may influence game play. *ESRBi – About the ESRBi Ratings System,* www.ersb.org/esrbi/about.html (visited Aug. 6, 2000). Unlike the ESRB system, however, this system is not yet widely used by industry members. In fact, the

ESRB lists, on its Web site, only 52 sites and online games that have been rated by ESRB*i*. *Sites and Online Games Rated by ESRBi*, www.esrb.org/esrbi/ratings.html (visited Aug. 6, 2000). Only three of these are rated Mature. *Id.* Thus, the implementation and use of the ESRB*i* system is not a focus of this Report.

193. As a condition for obtaining a rating for their games, industry members agree to comply with the requirements of both the IDSA Adcode and the ESRB Ad Principles.

194. The Commission requested marketing plans for specific game titles that the ESRB has rated as containing violent content. The scope of the Commission's requests for marketing plans included sequels to the game title and expansion packs (software that adds additional levels of gameplay to the game). (A sample request letter is reproduced in Appendix E.) The companies also produced plans for games rated for violent content that the Commission did not specifically request. Though the companies did not produce marketing plans for a few games requested, ultimately the Commission received plans for more than 200 games rated as containing violent content. These plans included highly detailed marketing plans, creative briefs, media plans, and ad dissemination schedules. The marketing information for the various games ranged from scant to extensive.

195. The Commission did not contact industry members who had not published any, or had published only a few, Mature-rated games. All of the 11 companies contacted are IDSA members (the IDSA Web site currently lists 32 members), and several officials from those companies serve on the IDSA's Board of Directors. For a list of IDSA members, see *Member Links*, www.idsa.com/members.html (visited July 27, 2000).

196. Raters are paid a fee for each rating session in which they participate. Training for raters includes viewing excerpts from over 100 video games previously rated by the ESRB. *See also News & Info: How Does a Product Get an ESRB Rating?*, www.esrb.org/news.html (visited July 26, 2000).

197. *Id.* To obtain a rating, the game publisher submits either a working version of the game or a video tape containing the most extreme scenes in the game, along with a description of the content of the game using the ESRB's Product Submission Form and Questionnaire. The submission form asks detailed questions about the game, including whether: it contains violent content; the player is rewarded for completing or avoiding acts of violence; the player can hurt, damage, destroy or kill humans or creatures; or the game depicts blood. After the game is rated (typically within five to seven business days), the ESRB requires each company to submit a final copy of the game and its packaging before it is released, so that the ESRB can verify that the content is consistent with what was originally submitted.

198. The ESRB reviews the findings of the raters, and grants the final rating and descriptors. The ESRB then notifies the company of the game's rating and any applicable descriptors. The developer or publisher can accept the rating, change the game and ask for a re-rating, or appeal. If the company accepts the rating, the ESRB issues a Rating Certificate containing the rating and any descriptors for the game. To date, the submitters have accepted nearly all ratings, although

in several instances, the submitters edited games to eliminate certain scenes and resubmitted them to achieve a lower rating. In no instance has anyone appealed the rating.

199. Before January 1, 1998, the Everyone category was called the "Kids to Adult" or "K-A" category. *Ratings Categories & Content Descriptors*, www.esrb.org/rating.html (visited July 26, 2000).

200. *Id.*

201. When packages are printed for use in promotional advertising before ESRB determines the rating, the RP icon must appear on the package. However, once the company ships the packages for retail sale, it must include the actual rating on the packaging. Further, when a company places advertising before the game is rated, the RP icon must appear in the ad, and "to the extent practical Companies should place ads for that title only in publications or outlets whose audiences would be appropriate for the content portrayed in the title." Once the ESRB issues a rating, game publishers must revise any print advertising to include the rating.

202. *News & Info: How Does a Product Get an ESRB Rating?*, www.esrb.org/news.html (visited July 26, 2000). Sales data from several major game publishers reveals that M-rated and T-rated games account for far more than 7% and 19%, respectively, of the revenue of those game publishers. Additionally, a May 1999 article in *Forbes* commented on the growth in marketing of M-rated games: "Spending on mature-content games rose nearly 50% from 1997 to 1998." Ben Pappas, *Video Games Generate Billions in Revenue – and Controversy. Do They Go Too Far?*, Forbes, May 31, 1999, at 54.

203. The ESRB defines the rating categories as follows:

EC titles have "content suitable for children ages three and older and should not contain any material that parents would find inappropriate."

E titles have "content suitable for persons ages six and older. These titles will appeal to people of many ages and tastes. They may contain minimal violence, some comic mischief (for example, slapstick comedy), or some crude language."

T titles have "content suitable for persons ages 13 and older. Titles in this category may contain violent content, mild or strong language, and/or suggestive themes."

M titles have "content suitable for persons ages 17 and older. These products may include more intense violence or language than products in the Teen category. In addition, these titles may also include mature sexual themes."

AO titles have "content suitable only for adults. These products may include graphic depictions of sex and/or violence. Adults Only products are not intended to be sold or rented to persons under the age of 18."

RP titles are awaiting a final rating from the ESRB. *Ratings Categories & Content Descriptors, supra* note 199.

Most of the rating icons previously contained an age designation descriptor. The icon for a Mature title formerly stated, "Ages 17 +," the Teen icon stated, "Ages 13 +," the Kids to Adult rating (now the Everyone rating) stated, "Ages 6 +," and the Early Childhood rating stated, "Ages 3 +." The ESRB reports that the age descriptor was removed to avoid customer confusion in the event two age designations (one placed by the ESRB and one included by the game publisher) simultaneously appeared on the same product – *e.g.*, a product could have contained an ESRB rating icon with an age descriptor for six years and older, while the publisher could have indicated that "for maximum playability, a player should be at least eight years old."

204. *Rating Categories & Content Descriptors, supra* note 199. According to a Commission survey, nearly half of parents who restrict the video games their children can play, do so based on the game's violent content. *See* Appendix F. Moreover, violent content is the leading reason that parents tell their children not to play a particular game. *Id.*

205. This descriptor means that the game "[c]ontains scenes depicting cartoon/animated/pixilated characters in unsafe or hazardous acts or violent situations." *Rating Categories & Content Descriptors, supra* note 199.

206. This descriptor means that the game "[c]ontains scenes depicting characters in unsafe or hazardous acts or violent situations or photographic detail." *Id.*

207. This descriptor means that the game "[c]ontains scenes depicting activities characterized as slapstick or gross vulgar humor." *Id.*

208. This descriptor means that the game "[c]ontains depictions of aggressive conflict involving cartoon/animated/pixilated characters." *Id.*

209. This descriptor means that the game "[c]ontains realistic or photographic-like depictions of aggressive conflict." *Id.*

210. This descriptor means that the game contains "[a]nimated/pixilated or cartoon like depictions of mutilation or dismemberment of body parts." *Id.*

211. This descriptor means that the game contains "[r]epresentations of blood and/or gore in realistic or photographic-like detail." *Id.*

212. This descriptor means that the game contains "[a]nimated/pixilated or cartoon like depictions of blood." *Id.*

213. This descriptor means that the game contains "[r]epresentations of blood in realistic or photographic-like detail." *Id.*

214. As expected from a technology-based product, electronic games have evolved considerably from the monochromatic blips and rectangles moving across a television screen in early games like Pong. Many games now have the feel and production values of both a well-produced motion picture and a record album. They follow a rich storyline and have developed characters who display emotions and facial expressions, utter dialogue, and face conflict, all accompanied by sound effects and a musical score. But such games differ from movies and music in one significant respect – they are interactive, permitting the game player, or "gamer," to control, or even assume the identity of, a digitized game character. *See* Kelly Anders, *Marketing and Policy Considerations for Violent Video Games*, 18 J. Pub. Pol'y & Marketing 270, 270 (1999) ("Video games have become increasingly sophisticated since their inception in the 1970s. The games have gone from bouncing a little white ball from side to side on a screen to games of virtual reality in which the player has an active role within the game.")

215. As one commentator has noted:

> The violence [in a segment of the electronic game market] has evolved with the technology, from early shooting games blasting mostly spaceships out of the sky to the most gory violence found today, in which characters literally tear one another apart with all the realistic details accompanying the act. Many of these games require the use of violence, often in increasing intensity, to advance through the various levels, thus using violence as a problem-solving technique.

Id. at 271. Further, it is now common for violent games to put the gamer in a first-person perspective (permitting game play through the eyes of a game character) and to equip the simulated enemies with artificial intelligence, rendering the simulated threats more unpredictable and, therefore, more realistic.

216. A recent example involved the rating of the game *Syphon Filter*, which received a T rating, and its sequel *Syphon Filter 2*, which received an M rating. A recent letter to the editor of *GamePro* magazine asked why the two games received different ratings given that "both have lots of violence and blood." *Editor's Letter: Buyers Beware*, GamePro, July 2000, at 24. An ESRB representative was quoted as responding, in part, "The full-motion videos in Syphon Filter 2 contained more killing scenes and a higher volume of blood than the first Syphon did. The sequel also included suggestive sexual themes, like a woman undressing who reveals her underwear. . . ." *Id.* Despite these differences, the games have identical content descriptors – "Animated Blood" and "Animated Violence." *Browse/Search Product Index*, www.esrb.org/search/index.html (visited Aug. 7, 2000) (search for "Syphon Filter").

217. According to the Commission's survey of parents, more than three quarters of parents who are at least slightly familiar with the rating system for video games believe that the system does at least a fair job of informing them about the level of violence in video games. *See* Appendix F.

218. Some industry members permit a parent to eliminate blood and/or gore from a game by including a "content lock" with the game. The extent to which enabling the blood/gore content lock reduces the game's violent content is not clear, however. The game *Soldier of Fortune*, for

example, has an M rating and an "animated violence" descriptor regardless of whether the parent purchases the version with the lock permanently enabled or the version that leaves it to the user to enable the lock; the un-locked version merely has an additional content descriptor for "animated blood and gore." *See Browse/Search Product Index*, www.esrb.org/search/index.html (visited July 30, 2000) (search for "Soldier of Fortune").

219. The requirement to disclose content descriptors in print ads took effect on January 31, 2000.

220. The requirement for a voice-over also took effect on January 31, 2000.

221. When clicked with the mouse, banner ads transport a Web surfer to Web pages promoting and selling game titles. According to a 1998 draft marketing plan, "Banners and other advertising buys on sites that reach secondary and tertiary target markets create broad awareness early on. Banners and buttons on gaming sites 30 days prior to product launch peak awareness and demand in time to effect the sell-in." The ESRB indicates that banner ads may not have enough space to include rating information, and that generally the consumer will get rating information on the Web site linked by the banner ad. However, the Commission's review suggests banner ads have ample room for this information.

222. Additionally, a number of ads ran showing the Rating Pending "RP" icon months after the ESRB had rated the game. For example, one company advertised a game with an RP icon in the July 1999 issue of *Computer Gaming World*, even though the game had been assigned an M rating more than four months earlier.

223. Typical situations include the failure to include any rating information on the packaging; failure to include the rating icon on the game cartridge, compact disc, or floppy disk; failure to include any descriptors or the correct descriptors on the back of product packaging; and the display of rating icons in magazine ads or in television ads that are not readable to the naked eye or that do not satisfy the IDSA Adcode's size requirements.

224. There was at least one instance when a rating for one popular action game was changed from Teen to Mature. At the ESRB's request, the game company sent letters to most of the major retailers stating "[the company] urges [the retailer] to resticker any existing inventory with the enclosed stickers." However, a June 2000 review of product packaging in one store in the Washington, D.C. metropolitan area showed that packaging for the game in question still displayed the Teen rating.

225. *See News & Info: About the Entertainment Software Rating Board*, www.esrb.org/news.html (visited July 5, 2000).

226. Sixty-one percent of the parents surveyed are aware of a rating system for video games, with 20% of those parents claiming to be "very familiar" with the system, 41% claiming to be "moderately familiar," and 30% claiming to be "slightly familiar." *See* Appendix F. In contrast, 73% of all children stated that they are aware of a rating system. *Id.* Children also are more

aware of the particular ratings that comprise the IDSA/ESRB system than their parents. *Id.*

227. *See* Appendix F. Of all the parents surveyed, only 28% reported using the rating system at least some of the time. Of only those parents who are aware of the system and at least slightly familiar with it, the responses broke down as follows:

Do you use the video game's rating when (name of CHILD) wants to play a game:	
All or nearly all of the time	20%
Most of the time	18%
Some of the time	14%
Rarely	15%
Never	29%
Don't know	4%

228. *See* Appendix F.

229. *See* ESRB Survey, *supra* note 65.

230. *Kaiser Survey*, *supra* note 30, at 2.

231. *See* David A. Walsh, National Institute on Media and the Family, *1998 Video and Computer Game Report Card* (released Dec. 1, 1998), www.mediaandthefamily.org/research/vgrc/1998-1.shtml (visited Aug. 15, 2000).

232. *See* Appendix F.

233. *Kaiser Survey*, *supra* note 30, at 2.

234. *See* ESRB Survey, *supra* note 65.

235. *See* Appendix F. Twenty-two percent of such parents stated that the system does a fair job of informing them about the level of violence in video games, and 6% said the system does a poor job. *Id.*

236. *See Children and Violence*, *supra* note 67.

237. *See* IDSA, *Entertainment Software Group Creates Independent Council to Oversee Video Game Advertising*, Oct. 13, 1999 (press release), www.idsa.com/pressroom.html [hereinafter *IDSA News Release*].

238. Ad Principles at 5.

239. *Id.* at 4. Anyone may submit a complaint or concern regarding an advertisement. Unless ARC dismisses the complaint, the advertiser will be given 10 business days to submit a written response. *Id.* at 7-8. At the conclusion of the investigation, ARC will determine the merits of the complaint. Either party may appeal that determination to a five-member panel appointed by the ESRB's president and consisting of one member of the public, one member of the advertising industry, one member of the publishing and/or media industry, and two members of the interactive entertainment industry. If ARC finds that an advertiser has violated the ESRB Ad Principles, ARC has the power to impose penalties, including, but not limited to, the revocation of the ESRB product rating, recall of the product, restickering of the product, or the payment of fines. ARC also may refer the matter to the "appropriate outside agency"; release information regarding the referral to the press, the public, and to the media in which the advertising at issue appeared; and publish on the Internet and in print a detailed report regarding such advertiser's action. *Id.* at 9-12.

240. Examples would include using an advertisement with a tag line that states: "banned by the ESRB" or "a 'T' rating has never been pushed this far." *Id.* at 5.

241. The scope and weight of each factor varies in accordance with the demographic for which each product, and its associated advertising, is intended and in relation to the advertising medium involved. *Id.* at 5.

242. Other guidelines on violent content are whether the ad includes: (1) graphic and/or violent depictions of the use of weapons; (2) allusions to or depictions of acts of verbal or physical abuse toward children, women, or animals; (3) allusions to or depictions of torture, mutilation, or sadism; (4) violence toward a political or public figure; or (5) allusions to or depictions of acts of arson or fire play. *Id.* at 6.

243. In at least one instance ARC contacted a company regarding the content of an ad, *i.e.*, the use in advertising of ad copy that might be considered offensive. Another company's creative brief for an M-rated game discusses the impact of the new ESRB Ad Principles on the content of its advertising: "Consider new ESRB guidelines for violence in video game advertising. Requires us to communicate message without being overtly gory or violent."

244. *See GamePro* (May 2000); *Computer Gaming World* (Apr. 2000).

245. *See IDSA News Release, supra* note 237. These publishers are: Imagine Media (which publishes *Next Generation*, *PlayStation Magazine*, *PC Accelerator*, *PC Games*, the *Official Dreamcast Magazine*, *N Gamer*, and the Daily Radar.com Web site); Ziff-Davis (which publishes *Computer Gaming World*, *Electronic Gaming Monthly*, the *Official US PlayStation Magazine*, and *Expert Gamer*); and IDG Games Media Group (which publishes *GamePro*). *Id.*

246. *Editor's Letter: Evil Is as Evil Does*, GamePro, Apr. 2000, at 26 (brackets added). The editor's suggestion to "find a pal" reflects common practice. Thirty-four percent of the children

surveyed by the Commission indicated that one of the ways they get video games to play is to borrow them from a friend. *See* Appendix F.

247. IDSA Adcode IV.B (June 30, 1999). The IDSA Adcode contains two other general advertising provisions. First, companies must not represent in their advertising, directly or indirectly, that a title is appropriate for persons under the age for which the game has been rated. *Id.* For example, any users depicted in an ad for a Teen-rated game should actually be age 13 or older. Second, the content of a game displayed in an ad should be an accurate representation of the actual game. *Id.*

248. *Marketing Violence to Children: Hearing Before the Senate Comm. on Commerce,* 106th Cong. (1999) (testimony of Douglas Lowenstein, President, IDSA), *reprinted at* 1999 WL 266745.

249. The Commission is aware of at least two instances in which the IDSA looked at possible violations of the prohibition against marketing software to children under the age for which the game was rated as appropriate. In both instances, the IDSA determined that no violation had occurred, but in doing so made clear that placing advertising for M-rated games in magazines or on television programs directed at a teen audience would likely be prohibited by the IDSA Adcode. In seeking information from one of the companies about that allegation, the IDSA described its concerns as follows:

> [I]f in fact [name omitted] did target teens in its [M-rated game] advertising and marketing, it would appear to be a direct violation of the IDSA Advertising Code of Conduct which prohibits under Section IV B the targeting of advertising for entertainment software products . . . to consumers for whom the product is not rated as appropriate. . . . The anti-targeting provision is important to the integrity of the rating system and is meant to ensure that young people are not encouraged to play games that are not suitable for them.

250. According to a 1999 study, television advertising and gaming publications are the top two sources of information about upcoming titles for gamers; gaming magazines are the number one source for gamers age 17 and under. *See Anderson & Associates Videogame Snapshot* (Dec. 1999) (analyzing data from interviews with 1,000 console gamers) (on file with the Commission).

251. In-store promotions typically consist of game ads in the store circulars, in-store rebates, and various types of visual media promoting the game, such as floor graphics, banners, shelf signs, standees, end caps, counter cards, and an in-store video of game play.

252. Most companies plan to place demo disks for M-rated games – containing one level of interactive game play or a non-interactive movie of game play – in gaming magazines popular with teens. They also plan game giveaway sweepstakes through the magazines, and often pitch their games to the editors in hope of having the game featured on the magazines' covers or discussed in previews or reviews. The companies similarly attempt to woo the online media by

making screen shots, sound files, and videos of game clips available for display by game-oriented Web sites; this same type of information, as well as downloadable demos, often is found on the companies' Web sites as well, or on Web sites dedicated to the particular game title.

253. Online promotional efforts also often include advertising on the Web for individuals willing to playtest a game before its release (so-called "beta testers"), provide feedback and identify any problems with the game, and potentially promote the game over the Web to other gamers; the use of "evangelists" and "message-seeding" to promote the game among hardcore gaming groups and game-oriented newsgroups; the creation and solicitation of hyperlinks between the game Web site or Web page and other game-oriented Web addresses, such as 3D shooter game sites; and the registration of game titles on popular Internet search engines.

254. The marketing plans, media plans, ad dissemination schedules and/or creative briefs of these 60 M-rated games contained express statements of age targeting. Invariably, these documents used the word "target" or some derivation thereof. For example, a 1998 marketing plan defined the game's "primary target" as "M 12-25 N64 and PSX owners" and the "secondary target" as "M 9-35 who are owners or potential owners of N64 an [sic] PSX." Another 1998 plan stated, "Communication Target: Primary: males ages 18-24 Secondary: males ages 12-17." A plan for a 2000 game stated under the "Target Audience" section, "Primary: Males, 12-24." A 1997 print plan information sheet contained the caption, "Target Audience: Males 12-24." A creative brief for a 1999 game stated under the "Target Audience" section, "Core gamers – males ages 12-24."

For purposes of this Report, a marketing or media plan was not deemed to target an under-17 audience unless the target age specified in the plan was 15 years old or younger; plans for four games targeted teenagers 16 and older.

255. Counting game sequels and expansion packs as distinct games, the Commission received marketing plans for approximately 64 M-rated console games (*e.g.*, games playable on the Playstation, Nintendo 64, Super Nintendo, Dreamcast, or Saturn systems) and for approximately 54 M-rated games playable on a personal computer ("PC"). Forty-six of those 64 console plans, or 72%, expressly targeted an under-16 audience; plans for two other console games were ambiguous regarding whether they targeted an under-16 audience, and therefore, were not counted as instances of express under-16 targeting. Fourteen of the 54 PC game plans, or 26%, targeted an audience under age 16. The lower incidence of underage targeting by plans for PC games likely reflects the older demographic of PC gamers. According to a 1998 study, 78% of console gamers are under age 25 versus 32% of PC gamers.

256. Of the remaining 35 games, the marketing documents for seven did not identify any magazines or television shows where advertisements would be placed. The remaining 28 games that did not appear to be targeted at under-17 publications or television shows were all PC game titles, again demonstrating the lower incidence of under-age targeting for PC games.

257. Marketing documents for only two of the games studied suggested plans to market to females, and even in those instances, females were not considered part of the primary target

audience. One company not contacted by the Commission recently announced its plans to target teenage girls with *Gals Fighters*, an E-rated fighting game with an animated violence content descriptor. *See Retail Buyer Guide*, GameWeek, Mar. 6, 2000, at 17; *Browse/Search Product Index*, www.esrb.org/search/esrb_search.cgi (visited Aug. 8, 2000) (search for "Fighters").

258. Several of the companies' narrative responses to the Commission's requests for information stated that they do not target teens for any M-rated games:

> [Company] does not consider teens a target market for any 'M' rated games. Thus, [company] does not market its games specifically to teenagers for any games with an 'M' rating or above.
>
> [Company] endeavors not to market and/or promote titles to persons outside of the target audience based on that title's ESRB rating.
>
> [Company] uses its best efforts to limit promotion of its games to a game's core audience and to refrain from promoting any game which is deemed inappropriate by (company) and/or the ratings system(s) utilized to inappropriate age groups, whether teenagers or children, depending upon the specific game.

Nevertheless, each of these companies submitted marketing documents or made ad placements suggesting otherwise.

259. *See supra* note 254 (listing examples of age target language from marketing documents).

260. One company's joint marketing document for several M- and T-rated games noted under the target section, "Age in line with ratings – Teen rated: M, 13-25 Mature rated: M, 18-35."

261. More recently, a creative brief for one game in 1999 identified the target audience as "Core gamers – males ages 12-24," while noting that the icon for an M rating should appear on the game's packaging.

262. In many instances, the marketing documents submitted did not indicate whether a described ad placement occurred as planned.

263. Based on the documents submitted to the Commission, radio does not appear to be a major medium for marketing electronic games. Nevertheless, four of the companies appeared to have used radio to promote M-rated games to an under-17 audience. Overall, seven of the 11 companies produced at least some information on marketing M-rated games over the radio, usually involving contests for free copies of the game. Four of those companies expressly targeted a 12-17 or a 12-24 demographic and planned promotions for their M-rated games on radio stations falling into one of the following formats: Contemporary Hit Radio, Urban Contemporary, Rap/Hip Hop, Adult Contemporary, Young Urban, New Rock, Album Oriented Rock, and Rock. One of those companies detailed plans to air radio contests and giveaways of an M-rated game during the morning and afternoon drive times, apparently because these are key

times to reach students; many of its documents contained the notation, "AM DRIVE IS 6A - 8A (PRIOR TO SCHOOL)." The same company's radio marketing plan for a different M-rated game targeted to males 12-24 stated, "We will use the top Teen stations in each market." Although one company's marketing plans targeted children as young as 14, its separate radio marketing plan was specifically targeted to males age 18 to 24.

264. In several instances, the advertising plans for these Mature games did a better job at reaching the 12-17 age group than the 18-34 age group. For example, a 1999 advertisement for an M-rated game showed superior reach for the males age 12-17 demographic, even though the marketing plan indicated that the target audience for that game was males age 17-25; in at least one instance, an ad placement for this game had broadcast ratings nearly twice as high for males age 12-17 than for males age 18-34. A 1999 advertisement by the same company for a different M-rated game showed superior reach for the males age 12-17 demographic, even though the plan listed males age 18-34 as the "core target" and males age 12-17 as a secondary target. A second company ran an advertising campaign in 1999 where the gross rating points were approximately 40% higher for the males age 12-17 demographic compared to the males age 18-34 demographic. This same company planned to run advertisements in 2000 for an M-rated game on the MTV network and on World Wrestling Federation programming such as *Raw, War Zone, Smackdown, Live Wire, Metal, Superstars, Sunday Night Heat,* and *Jacked*; the ratings for this programming were up to two-and-a-half times greater for males 12-17 than for males 18-34.

265. This chart primarily reflects data provided by the companies on marketing activities planned for 1997 through 1999, although some information was provided for marketing activities planned for 1996 and early 2000. Additionally, the data reflect the documents that the companies provided in response to the Commission's requests; therefore, the data's completeness is contingent on the companies' document retention practices and their responsiveness to the requests.

266. One company provided marketing documents targeting children under age 16 for 17 separate game titles; another targeted 16 games to an under-16 audience. All but one of the remaining 10 companies produced plans to target children under 16 for one to six games. At least five of the companies produced plans to target children in 2000.

267. This row combines data showing that the company planned to advertise, and actually did advertise, in magazines with a majority under-18 readership.

268. This row combines data showing that the company planned to advertise, and actually did advertise, on television shows popular with teens aged 17 and under. "N/A" indicates that the company documents did not show plans to use television to advertise M-rated games.

269. One company's marketing documents did not indicate whether it planned to advertise its M-rated games on the World Wide Web.

270. In the July 2000 issue of *GamePro*, the Readers' Choice for Best Adventure Game was *Resident Evil 3: Nemesis* (M) and the second runner-up was *Metal Gear Solid: VR Missions* (M).

Your Final Answer, GamePro, July 2000, at 48. The Readers' Choice for Best Shooter Game was *House of the Dead 2* (M), while the runners-up were *Turok: Rage Wars* and *Quake II* (both M). *Id.* According to *GamePro's* media kit, 62% of its readers are under 18. *See* Appendix I.

In the July 2000 issue of *Kidscreen*, 100 teens, ages 13 to 16, reported on their "summer wish lists" for a variety of products, including video games. For games, the boys named *Tony Hawk Pro-Skater* (T-rated), *Pokemon* (E-rated), *Resident Evil II* (M-rated) and *Diablo II* (M-rated); the girls named *Pokemon* and *Resident Evil II*. Kid Think Inc., *The Teen Scene in the Summertime*, Kidscreen, July 2000, at 33.

271. *See* Appendix F. The children were asked, "Which three video games are currently your favorites?" Of the 93 children identifying specific games by title, 22 children named at least one M-rated game.

272. *See* The NPD Group, Inc., *NPD's Annual 1998 & 1999 Consumer Purchase Data for the Video Games Industry* (on file with the Commission).

273. Several of the companies provided studies on younger teens and "tweens" in response to the Commission's request for any consumer research on particular games. In one study, a company asked 27 males between the ages of 12 and 24 to playtest a demo for a new game that ultimately received an M rating from the ESRB. It asked participants to rate the game for several characteristics, including gameplay and enemy interaction. The report noted that the teens (12-17) "rated all categories higher than the 18-24 year olds." This playtest occurred a few days before the game was submitted to the ESRB for a rating.

274. One company compared the demographics of *Electronic Gaming Monthly* to those of *Next Generation*, another popular game-enthusiast magazine, as follows: "Basically, the two publications capture very different audiences. . . . *Next Generation* is skewed slightly older and is an industry focused book. It would be more effective in reaching PC gamers, and not console gamers." According to its "Reader Profile," 34% of *Next Generation's* readership is under 18.

275. *See* Appendix I. Marketing documents from three companies also showed plans in 1999 to place advertisements for M-rated games in *Nintendo Power*, a magazine with a readership 75% age 17 and under. Game companies continue to use popular teen publications to promote M-rated games. For example, one company not contacted by the Commission recently was reported as planning to advertise an M-rated game in three of these magazines – *GamePro, Electronic Gaming Monthly*, and *Expert Gamer*. *See Retail Buyer Guide*, GameWeek, June 19, 2000, at 14.

276. *GamePro's* readership is 62% 17 and under; *Electronic Gaming Monthly*'s readership is 59% 17 and under. *See* Appendix I. An October 18, 1999 article in *Newsweek* included *GamePro* and *Electronic Gaming Monthly* in a list of the 10 most-read magazines by 12- to 15-year-olds. *The Truth About Tweens*, *supra* note 178, at 62. The editors of *GamePro* described its readership this way:

> *GamePro* is the fifth largest male-teen magazine and the largest-circulation video

> game publication in the U.S. According to Teen Research Unlimited, 20 percent of all American male teens (one out of five) read *GamePro* in '99. So not only does everybody want to be a GamePro, but everybody wants to advertise in *GamePro*, too.

Editor's Letter: I'll Take GamePro to Win, GamePro, Apr. 2000, at 26.

277. This review looked for placement of ads for any M-rated game, regardless of whether the M-rated game included violent content. Nonetheless, virtually all of the ads were for M-rated games that had a descriptor indicating violent content.

278. Although several of these other companies are not IDSA members, their participation in the ESRB rating system obligates them to avoid targeting M-rated game advertising to children.

279. In preparing the chart, RP ads were included in the rating category that the game later received. The IDSA Adcode provides that RP ads should "to the extent practical" be placed "only in publications . . . whose audiences would be appropriate for the content portrayed in the title." IDSA Adcode at V.D. The chart does not include 18 ads for games that as of August 2000 had not yet received their final rating. Also, in one instance, the ESRB changed a game's rating from Teen to Mature after ads referring to a T rating began to run. Later ads were changed to include the M rating. For purposes of this chart, instead of counting all ads for that game as ads for an M-rated game, ads with the Teen rating were counted as ads for a T-rated game.

280. Industry members may assert that they use magazines like *GamePro* and *Electronic Gaming Monthly*, which are geared specifically to the console game consumer, to promote M-rated console games to *young adult* console players. Yet it is inevitable, given the young demographics of console game players and the corresponding young demographics of the readers and subscribers of these magazines, that this advertising will also reach younger teen and pre-teen game players in substantial numbers, regardless of whether companies consciously intend to target younger teens or children with their ads. Indeed, IDSA's president has publicly acknowledged the substantial percentage of 12- to 18-year-olds who play console games and read *GamePro*, noting that this magazine is targeted at kids, albeit not "exclusively" or "directly." *See Marketing Violence to Children: Hearing Before the Senate Comm. on Commerce, Science, and Transp.*, 106th Cong. (1999) (testimony of Douglas Lowenstein), *reprinted at* 1999 WL 278161.

281. Grouped together, the companies' marketing documents show plans to air ads for M-rated games on more than one third of the programs that are or were among the 25 network, cable, and syndicated shows most popular with teens 12 to 17 and boys 12 to 16. *See* Appendix I; Simmons Market Research Bureau, *STARS 1998: Simmons Teen Age Research Study* (underlying data on file with the Commission). In general, regardless of whether their marketing documents expressly targeted an under-17 audience, companies that advertised their M-rated games on television planned to place their advertisements on numerous teen shows.

282. Information from the Video Monitoring Service ("VMS") confirmed the placement of numerous ads for M-rated games on these television shows in 1998, 1999, and the first six

months of 2000. The Commission's review of ads on several television shows during March and April 2000 revealed that five of nine popular teen shows (*Baywatch, Beat Suite, South Park, Total Request Live,* and *WWF Smackdown*) contained ads for M-rated games.

283. According to one company's marketing plans for two M-rated games, the way to reach the 12 to 24 age group was to advertise on the following cable networks and programming slots: Comedy Central (run of schedule, *South Park*), MTV (*Beavis & Butthead, Daria, Singled Out,* and *Weekend Stunt*), TBS/TNT (*Wrestling, WCW Thunder,* and *Babylon 5*), and USA (*Baywatch, Saved By The Bell, Up All Night, USA High,* and *Wrestling*). Attached to the media plan was a list of "[a]pproved networks with target allocations":

Network	GRP Allocation
MTV	60%
Sci Fi	10%
Comedy Central	10%
TBS/TNT	10%
USA Network	10%
Total	**100%**

A second company's marketing plan for an M-rated game states, in part:

> **TV Ads**
> Target: M12-24
> . . .
> Programming:
> – Youth-targeted National Cable: MTV, Comedy Central, Sci-Fi, USA, TBS Wrestling, etc.
> – Youth-targeted syndication: Hercules, Xena, A. Gladiators, Wrestling, Baywatch, etc.

284. The marketing plans for the eleventh company revealed an intent to promote its M-rated games on the World Wide Web through the creation of game-specific Web pages. However, the company revealed no plans to place banner ads online. Indeed, the only M-rated game for which a marketing plan even mentions banner ads states that "[n]o online banner ads" would be placed.

285. During a recent four-month period, the audience share of persons ages 17 and under ranged anywhere from 32.4% to 41.7% for gamespot.com, from 32.6% to 45.9% for ign.com, from 24.4% to 41.9% for mtv.com, and from 27.6% to 48.8% for happypuppy.com. *See* Appendix I.

286. One of these games was the T-rated, Game Boy version of an M-rated game, and was targeted to ages seven to 15. Generally, the Commission received little information on the marketing of games for the Nintendo Game Boy, which is a hand-held game console with more rudimentary graphics and sound capabilities than television consoles, such as Nintendo 64 and Playstation, or personal computers. Most Game Boy titles are rated E, appropriate for everyone age six and older. *Browse/Search Product Index*, www.esrb.com/search/platform.cgi (visited Aug. 14, 2000) (search for "Game Boy"). Nevertheless, some E-rated Game Boy titles have been criticized as "playable advertisement[s]" for their M-rated counterparts – a means of introducing consumers as young as six to the characters of violent, M-rated games. Daphne White, *It's Not Just a Toy, It's an Indoctrination*, Wash. Post, Aug. 13, 2000, at B3. *See also* Appendix G (*Third-Party Views and Suggestions for Improvement of Entertainment Media Rating and Labeling Systems*) at 3.

287. A marketing plan was not deemed to target an under 13 audience unless the target age specified in the plan was 11 years old or younger. Seventeen marketing plans for T-rated games targeted children ages 12 and older.

288. Five of the 10 plans came from one company.

289. For example, nine of the companies produced plans to advertise 16 T-rated games in anywhere from three to 11 of the same magazines, and on anywhere from 12 to 34 of the same television shows, that they used to advertise their M-rated games.

290. Nielsen Media Research, 3Q '99. One plan discussed the value of advertising on the Nickelodeon Network: "Though [game title] has a T rating, I have asked Nickelodeon sales to help get an approval so that the product can air on the network. (Nick airs 27 of the top 30 cable shows against our target demo B9-17)."

291. *See* Appendix I. The Commission has not confirmed that advertisements for these games ran in these magazines as planned.

292. *See, e.g.*, David A. Walsh, National Institute on Media and the Family, *1999 Video and Computer Game Report Card* (released Nov. 23, 1999), www.mediaandthefamily.org/research/vgrc/1999-1.shtml; Daphne White, *From Teletubbies to Mortal Kombat in 3 Easy Steps*, 2 *The Lion & Lamb Project Newsletter* 1 (Winter/Spring 1999), www.lionlamb.org/news_2_2_1.html (visited July 31, 2000).

293. Action figures generated over $1 billion in sales in 1999, a 13% growth from 1998, with 96% of sales generated from licensed products. Star Wars action figures dominated the field, taking first and second place in sales, with Power Rangers, Wrestling figures, and Pokemon ranking third, fourth, and fifth. No action figures based on an M-rated game placed in the top 50 in either year. *See* The NPD Group, Inc., *NPD TRSTS 1999 Traditional Toy Industry Review*. Characters from several popular M-rated games, such as *Duke Nukem*, *Dungeon Keeper*, *Metal Gear Solid*, *Mortal Kombat*, *Quake*, *Resident Evil*, and *Turok*, have been licensed as action figures.

294. This action figure was purchased at a Toys "R" Us retail store on August 1, 2000.

295. *Action Figure News & Toy Review*, for example, includes a price guide for action figures, including G.I. Joe and Star Wars. *Action Figure News & Toy Review Price Guide*, Feb. 2000, at 91. The magazine *Action Figure Digest* includes numerous ads from dealers targeting action figure collectors. *See e.g., Action Figure Digest*, Sept. 1999, advertisement at 2. Several Web sites have been created for collectors or to track news of the latest figures coming onto the market. *See, e.g.*, www.hasbrocollectors.com; www.figures.com.

296. Jeff Jensen, *Adult Toys, the "Matrix" Action Figures Have Arrived. But the New Toys Aren't Recommended for Children*, Ent. Wkly. Online (Jan. 28, 2000), www.pathfinder.com/ew/daily/0,2514,2533,matrixactionfigureshave.html.

297. *See* ESRB, *ESRB Launches National Campaign to Increase Awareness of Computer and Video Game Rating*, Nov. 9, 1999 (press release) [hereinafter *ESRB News Release*]. The Video Software Dealers Association ("VSDA") also has adopted a similar program, "Pledge to Parents," which applies to both electronic games and movie products, and urges retailers "not to rent or sell videotapes or video games designated as 'restricted' to persons under the age of 17 without parental consent, including all movies rated 'R' by the Motion Picture Association of America and all video games rated 'M' by the Entertainment Software Rating Board." *Pledge to Parents,* www.vsda.org/consumer/pledge.html (visited Aug. 6, 2000). VSDA's program was first adopted in 1991 and renewed in 1999, following the events at Columbine. No retailer submitted documents pertaining to its involvement in VSDA's program.

298. The Commission requested information from the following retailers about their in-store and online practices: Amazon.com (exclusively online), Babbage's (www.gamestop.com), Best Buy, Blockbuster (www.blockbuster.com), Electronics Boutique (www.ebworld.com), eToys, Inc. (www.eToys.com, exclusively online), Hollywood Video (www.hollywoodvideo.com and www.reel.com), Musicland (www.musicland.com, www.samgoody.com, www.mediaplay.com, www.oncue.com, www.suncoast.com), Target (www.target.com), Toys "R" Us (www.toysrus.com), Trans World Entertainment (www.twec.com), and Wal-Mart (www.walmart.com).

299. In answer to a recent call for increased enforcement of restricted access to adult-rated products, two game retailers not contacted by the Commission for this study (Sears and Montgomery Ward) announced plans to remove M-rated game titles from their shelves. Curtis Lawrence, *Retailers Reject Violent Video Games*, Chi. Sun-Times, May 9, 2000, at A12.

300. It is unclear, however, whether this retailer has implemented this policy because its retail outlets and online Web site still carry versions of games, such as *Mortal Kombat Trilogy, Resident Evil Director's Cut*, and *South Park Rally*, that contain some of these descriptors.

301. Electronics Boutique has "EBKids" stores.

302. Stocking practices may vary for games, music, and movies even within the same company. For example, one retailer does not stock explicit-labeled recordings but does stock and sell M-rated video games. Another markets and sells M-rated games on its Web site, but does not offer explicit-labeled music or movies rated above PG.

303. ESRB has stated that the four retailers are Toys "R" Us, Babbage's, Funcoland, and Electronics Boutique. *See ESRB News Release, supra* note 297. Similarly, in recent written testimony submitted to Congress, the IDSA spoke of retailers who have adopted policies to uphold the rating at the point of sale by not selling Mature or Adults Only games to persons under 17. According to the IDSA, "(s)uch national chains as Toys 'R' Us, Babbage's, Electronics Boutique, and Funcoland all agreed to either actively restrict sales of 'M' rated games to persons under 17 or use their best efforts to prevent such sales." *Impact of Media Violence: Hearing Before the Senate Comm. on Commerce, Science and Transp.*, 106th Cong. (2000) (testimony of Douglas Lowenstein, President, IDSA), *reprinted at* 2000 WL 306533. One of those retailers, however, indicated to the Commission that it had not adopted any formal, written policy to restrict sales, but does encourage store managers to use "sound judgment" regarding sales to minors. Funcoland, which recently merged with Electronics Boutique, was not contacted as part of the FTC's study.

304. *See* Toys "R" Us, *Toys "R" Us Launches Rating Symbols Initiative in Stores Nationwide*, Nov. 9, 1999 (press release), www.shareholder.com/toy/news/19991109-11933.htm.

305. Blockbuster follows the same "Youth Restricted Viewing" policies with respect to the sale of M-rated games as it does for R-rated movies. *See supra* note 112. Aside from Blockbuster, Hollywood Video is the only other company contacted by the Commission that rents games. Electronics Boutique is currently testing a rental program in some stores.

306. Only 15% of the shoppers were asked their age. *See* Appendix F.

307. At one retailer, 21 of 22 were allowed to purchase; at another, 23 of 27; at a third, five of six; and at the last retailer, 15 of 24 shoppers were allowed to purchase.

308. IEMA represents 28 of the top 30 retailers in the interactive entertainment industry. *About the IEMA*, www.theiema.org/about.html (visited July 30, 2000).

309. Some industry members have raised concerns that collective action to restrict youth access to rated or labeled products would violate the antitrust laws. As discussed in Appendix K, *Application of Antitrust Principles to Voluntary Industry Efforts to Restrict Marketing and Sales of Violent Entertainment to Children*, the Commission believes it is feasible to develop and implement industry codes in this area without running afoul of the antitrust laws.

MARKETING VIOLENT ENTERTAINMENT TO CHILDREN:

A REVIEW OF SELF-REGULATION AND INDUSTRY PRACTICES IN THE MOTION PICTURE, MUSIC RECORDING & ELECTRONIC GAME INDUSTRIES

APPENDICES A - K

REPORT OF THE
FEDERAL TRADE COMMISSION

SEPTEMBER 2000

CG030345

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Orson Swindle	Commissioner
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Appendix A

A REVIEW OF RESEARCH ON THE IMPACT OF VIOLENCE IN ENTERTAINMENT MEDIA

This Appendix reviews scientific research on the effects of entertainment media violence on children. The research on this topic is extensive, yielding a large number of articles that describe the results of various studies. The great majority of these studies focus on the effects of television, which has been the dominant form of media entertainment over the past 50 years. Relatively few have looked directly at the effects of the products at issue in the Commission's study: motion pictures, music recordings, and electronic games – though, as described below, the body of research on electronic games is growing. Similarities in program format suggest that the television research results are most relevant to movies, while their relevance to music and electronic games is less clear.

A majority of the investigations into the impact of media violence on children find that there is a high *correlation* between exposure to media violence and aggressive and at times violent behavior.[1] In addition, a number of research efforts report that exposure to media violence is correlated with increased acceptance of violent behavior in others, as well as an exaggerated perception of the amount of violence in society.[2] Regarding *causation*, however, the studies appear to be less conclusive.[3] Most researchers and investigators agree that exposure to media violence alone does not cause a child to commit a violent act, and that it is not the sole, or even necessarily the most important, factor contributing to youth aggression, anti-social attitudes, and violence.[4] Although a consensus among researchers exists regarding the empirical relationships, significant differences remain over the interpretation of these associations and their implications for public policy.[5] This review does not attempt to resolve those issues or to provide an independent evaluation of the merits of particular studies; rather, this review seeks to provide background information and a current survey of the principal research findings regarding the impact of media violence.

The review proceeds in four parts. Section I provides background information useful for understanding the empirical literature and the relevant policy issues. Section II surveys research into the impact of televised violence. Section III examines the results of more directed research on how different kinds of programming content can influence the aggressive tendencies of youthful viewers. Section IV reviews studies dealing with the impact of electronic games that contain violent content.

The study of media violence is necessarily intertwined with more general research on the causes of violent behavior. The Surgeon General is preparing a report, to be completed by the end of 2000, on the various risk factors and developmental markers that have been connected through epidemiological research with youths who commit violent acts.[6]

I. BACKGROUND INFORMATION

A. Definitions of Media Violence Used by Researchers

Both "media" and "violence" are defined by researchers dealing with the entertainment media in a variety of ways.[7] Most of the studies concentrate on either television or movies, although an increasing amount of research attention is being directed toward the impact of violent content in music and electronic games.

Researchers differ significantly in the kinds of violent content they employ in their study of media effects. Experimental studies allow for the greatest control over media content. Investigators have much less leeway for studies based on surveys of individual characteristics, because "exposure" is defined in terms of a subject's past viewing preferences, as revealed by the survey.[8] When relevant, this Appendix provides the particular definitions used in the research being discussed.

B. Theoretical Pathways from Media Violence to Real World Violence in Youth

Social learning theory has guided a great deal of research on social behavior. Huesmann and Eron (1986) identify three psychological processes through which exposing a child to excessive media violence can encourage aggressive behavior: 1) observational learning: children learn to behave aggressively by imitating violent actors on TV, just as they learn cognitive and social skills by imitating parents, siblings, peers, and others; 2) attitude change: the more TV a child watches, the more accepting the child becomes of aggressive behavior; and 3) scripts: social behavior is controlled to a great extent by cognitive scripts and strategies that have been stored in memory and are used as guides for behavior.[9] Television shows can be a source of such scripts. A child who repeatedly watches TV characters behaving in a violent way may store this as "script" to be used when facing similar situations.[10] These same linkages, of course, also describe the ways in which media can encourage pro-social behavior.[11]

C. Types of Studies Conducted by Researchers[12]

In general, researchers employ three different techniques to study the impact of media violence on children. They are as follows:

***Experimental Studies*:** Subjects in experimental studies are randomly assigned to exposed and control groups. Children in the exposed group are shown violent television programs or movies, while the control group is shown nonviolent programming or no programming at all. Investigators then observe the level of aggression exhibited by children in each group after exposure to the selected media. Effects of the violent media are estimated as the increase in aggression exhibited by the group watching the violent program compared to those who did not. Indices of aggression are limited by practical and ethical constraints. One frequent approach is to place both groups of children in a room with a Bobo Doll, a large inflated plastic figure. Aggression is measured by the degree to which the children hit the Bobo Doll.

Correlational Analysis: In correlational analysis, investigators obtain information from questionnaires administered to youthful subjects regarding their television watching activities and various self-reports of aggressive behavior, sometimes including criminal histories. They also typically collect additional background information on the subjects that also may be linked to aggressive activity. Researchers then use statistical analysis to identify relationships between a subject's preference for violent programming and his or her aggressive tendencies. These kinds of investigations are called "correlational" because of the difficulty in discerning the direction of the relation between media violence and aggressive behavior: does the watching of violent programming lead to aggressive behavior, or does aggressive behavior lead one to seek out media with violent content?

***Event Studies*:** The third major class of empirical research attempts to combine the strengths of both experiments and surveys by analyzing the impact of an outside event that leads to greater exposure of violent programming – typically, the introduction of television into an area – on various indices of aggression and violence in that community. Ideally, this approach takes the form of a "natural experiment" where real world indices of violence in the community into which television is introduced are compared to control communities where television had already been available.

II. RESEARCH FINDINGS: TELEVISION

This section outlines the key research findings regarding the general impact of televised violence on young viewers and how these results have been interpreted.

A. Results of the Empirical Research

1. Experimental studies

A majority of experimental investigations undertaken in the laboratory report that exposure to violent programming leads children to act more aggressively.[13] This is true for a wide variety of settings and outcomes. Violent television programming has been found to increase a child's tendency to fight with playmates, and to hit inanimate objects such as a Bobo Doll.[14] One study reported that exposure to violent films led to an increase in blood pressure levels among college students.[15] The kinds of violent media used in the tests vary widely, from naturalistic horror to fantasy cartoons.

The strength of the experimental method lies in its ability to attribute causality more unequivocally than other research methods where subjects cannot be assigned randomly to exposed and control groups. As a result, most researchers conclude that violent programming does, in a variety of experimental settings in the laboratory, lead children to act more aggressively.[16] At issue, however, is the applicability of these results to more realistic settings. Comstock and Paik (1991) remark:

> The experimental setting for teenagers and young adults departs from the everyday in the perceptions of the subjects, in the brevity of the television exposure, in the absence of the possibility of retaliation for aggression, in the exclusion of competing and countervailing communications, and in the criterion of immediacy of the measure of effects.[17]

Also, critics point to a variety of potential biases stemming from the way most experiments are conducted. Freedman (1994), for example, hypothesizes two alternative explanations for the finding that violent programming tends to stimulate aggressive behavior in youthful subjects: First, violent programs will tend to get subjects more excited than a quiet neutral film, so subjects will respond aggressively in either a pro- or an anti-social way.[18] Second, youthful subjects tend to respond to what the researcher wants them to do.[19] Therefore, Freedman does not find it surprising that subjects will, after watching a film where the actors hit each other, go into the test room and hit their playmates or the Bobo Doll.[20] Similar concerns have been registered by Wilson and Herrnstein (1985) and by Krattenmaker and Powe (1996).[21]

Despite the concerns raised by Freedman and others, it appears that most researchers believe that the almost uniform results generated by the laboratory experiments serve as an important complement to what they view as largely similar results obtained from other investigational approaches.[22]

2. Correlational studies

The most frequent type of correlational study is the "one shot" model that uses a single questionnaire to ask subjects about their television viewing preferences and a variety of behavioral traits. One of the most extensive survey research efforts of this type was performed by Belson (1978), who investigated the behavior and viewing habits of over 1,500 adolescent males in London in the early 1970's.[23] In addition to finding a moderate correlation between high exposure to television violence and violent behavior, Belson also identified a dose-response relationship: the more exposure to television violence, the greater the reported actual violent activity of the subjects – holding constant the impact of other influences on violent behavior such as family background, cognitive ability, etc.[24] Other survey investigations report results similar to Belson's findings, although there is considerable variation in the strength of the relationship between media violence and aggressive behavior, as well as in the sophistication of the statistical techniques employed.[25]

Longitudinal studies, where the same subjects are surveyed at different points in time, represent a potentially more informative approach because researchers can investigate the relation between early exposure to violent media and subsequent aggressive tendencies. One important study of this type is the investigation by Lefkowitz, Huesmann, Eron, and their associates into the television viewing habits and behavior of 875 third-grade children in a semi-rural county in upstate New York during the 1960's.[26] The researchers report that children with a preference for violent programs at age eight were more likely to exhibit aggressive behavior at age 19.[27] Also, preference for violent television viewing at age eight was a predictor of serious crimes engaged in by subjects when they were 30 years old.[28] In a similar analysis based on surveys conducted in five countries in the late 1970's, Huesmann and Eron (1986) conclude that their findings suggest a bidirectional relationship between exposure to media violence and violent behavior: the child learns to be violent from violent media which, in turn, induce the desire to watch more violent media.[29]

Another important longitudinal study was published in 1982 by Milavsky and associates, who followed several hundred children in two Midwestern cities for three years in the 1970's.[30]

For the analysis of young boys and girls, the authors report that initial correlations between exposure to violent media at the beginning of the period and later aggressiveness turned small and statistically insignificant after controlling for social and familial factors, as well as past levels of aggressive behavior.[31] Milavsky *et al.* conclude that their results fail to support the hypothesis that exposure to media violence causes aggression in children.[32] Huesmann *et al.* (1997) view the Milavsky *et al.* results in a somewhat different light by focusing on the predominance of positive (albeit insignificant) statistical relationships between exposure to media violence and subsequent aggression as being at least consistent with the causal hypothesis.[33] Huesmann *et al.* argue that closer inspection of Milavsky *et al.* and other studies purporting to contradict the causal hypothesis reveals "that their results are not discrepant, but simply not strongly supportive of the [causal hypothesis]."[34]

Survey research also has been used to investigate the extent to which televised violence creates desensitization and "mean world" effects among youthful viewers. In regard to the latter, Gerbner and his associates report that "long-term exposure to television, in which frequent violence is virtually inescapable, tends to cultivate the image of a relatively mean and dangerous world."[35] They further describe an approximate dose-response relationship in which "heavy viewers," those who watch television more than three hours a day, are more likely than "light viewers," those who watch two hours or less, to provide responses characteristic of the mean world syndrome.[36] Bok (1998) and Gunter (1994) discuss further research on the Gerbner hypothesis, some of which is supportive and some of which is not.[37]

Alternatively, some researchers report that the cumulative exposure to media violence has a numbing effect on heavy viewers, making them less sensitive to subsequent acts of violence – both in the media and in real life. Such a desensitization effect may "shrink empathy for suffering in real life and diminish the readiness to go to the help of persons in need."[38] Support for this view comes from Huston *et al.* (1992) who report on research showing that children and adults who are exposed to televised violence "are less likely than unexposed individuals to seek help for victims of violence."[39] Huesmann *et al.* note, however, that the link between desensitization and aggressive behavior is not clear-cut: "It should not be surprising that emotional and physiological responses to scenes of violence habituate as do responses to other stimuli. It is more difficult to make the case that such habituation would influence the future probability of aggressive behavior."[40]

The above review suggests that there is a fair amount of uniformity among researchers in finding a correlation between media violence and indices of aggression and violence in children (with more variable results for desensitization and "mean world" effects). There remains, however, the question of whether these empirical patterns suggest a causal chain going from exposure to the media violence to aggressive and violent acts in the real world. Because of the difficulty in assigning causality from correlational studies, a number of researchers have employed inventive ways of assessing the impact of events that created large changes in a community's exposure to television.

3. Event studies

A major event study analyzed effects on children from the introduction of television in a rural Canadian community during the 1950's.[41] The researchers in this project compared children before and after the introduction of television in one town (Notel) with their peers in two comparable towns where television was already well established: Unitel (receiving the government-owned channel, CBC) and Multitel (receiving both CBC and U.S. stations).[42] They measured aggression based on observations of children's interactions in the schoolyard during free play, by teacher ratings, and by peer ratings.[43] Longitudinal observations of 45 children first observed in grades one and two and re-evaluated two years later indicated that both verbal and physical aggression increased over this two-year period for children in Notel after the introduction of television, but not for children in the two control communities where television was already available.[44] Accordingly, the researchers conclude that their study demonstrates the potential of television to increase aggressive behavior among children.[45]

The Canadian investigation is considered the best controlled study of its type, and provides some of the most persuasive evidence in support of the hypothesis that violent media content stimulates aggressive behavior in children. Nevertheless, additional results from the study suggest a somewhat equivocal role for media violence as a cause of aggressive behavior. Ledingham *et al.* (1993) note that Unitel received only the public television channel (CBC), yet its children exhibited aggression levels similar to the Multitel community, which received U.S. channels (and their greater level of media violence) as well.[46] They suggest that these results indicate that "the absolute number or type of channels available is relatively unimportant."[47] Also, the Canadian investigation failed to replicate the above-noted Eron and Huesmann finding that initial viewing of violent programming predicts future aggression levels: "[T]he amount of television watched at the initial time of testing by the children of Unitel and Multitel did not significantly predict the amount of aggression seen two years later (although aggression assessed in the follow up period was predicted by television viewing assessed at the same time)."[48]

A more recent study by Centerwall (1992) compares changes in violence rates among the U.S., Canada, and South Africa before and after the introduction of television in South Africa.[49] Because television was introduced in South Africa only in 1976 although it had been available since the 1950's in Canada and the U.S., Centerwall uses the latter to control for the non-television impact on violence rates. He reports that violence rates in South Africa remained constant during the 1960's while increasing at a rapid rate in the U.S. and Canada during the same period.[50] After the introduction of television, South Africa experienced significant increases in violence rates. Centerwall concludes that the introduction of television, with its associated frequent portrayal of violent acts, results in a significant rise in interpersonal violent acts in a society.[51]

The Centerwall study has been criticized on a number of grounds. Bok (1998) and Krattenmaker and Powe (1996) note the potential distorting effect on Centerwall's results of his not taking into account the social changes taking place in South Africa during the time period of the study.[52] On a more general level, Donnerstein and Linz (1998) point out that Centerwall's focus on television in general makes it difficult to isolate the impact of violence in the entertainment media versus the violent content shown on televised news accounts.[53] This is a potentially important distinction because studies show that the extensive reporting of violent events in the news media can result in at least a short-term increase in crime rates.[54] Furthermore, other researchers suggest that excessive time spent by children watching television, regardless of content, may be a more important predictor of aggressive behavior and other antisocial acts.[55]

B. *Third-Party Assessments of the Research*

This summary provides a snapshot of the very large volume of basic research that exists on the general impact of televised media violence on youth. Comprehensive reviews have been conducted over the past 40 years by various commissions, as well as by individual researchers. Most of these reviews note the general uniformity of empirical findings – in particular, a robust correlation between exposure to media violence and aggressive behavior among youth. There remain, however, appreciable differences in how these empirical results are interpreted.

Five principal commissions and review boards have assessed the overall research record regarding media violence: the National Commission on the Causes and Prevention of Violence (1969);[56] the Surgeon General's Scientific Advisory Committee on Television and Social Behavior (1972);[57] the National Institute of Mental Health ("NIMH") Television and Behavior

Project (1982);[58] the Group for the Advancement of Psychiatry Child and Television Drama Review (1982);[59] and the American Psychological Association Task Force on Television and Society (1992).[60] The first three commissions were sponsored by the U.S. federal government and included representatives from the government, industry, and academia. The last two commissions were sponsored by independent practitioner groups: the Group for the Advancement of Psychiatry ("GAP") and the American Psychological Association ("APA").

All five reviews note the existence of a significant empirical association between exposure to television violence and aggressive behavior among youthful viewers.[61] Although they each chose different ways of characterizing the relationship, all imply that exposure to violent television programming is more likely than not to increase aggressive behavior among certain parts of the population. The NIMH study, for example, noted that "the consensus among most of the research community is that violence on television does lead to aggressive behavior by children and teenagers who watch the programs."[62] The APA task force concluded: "There is clear evidence that television violence can cause aggressive behavior and can cultivate values favoring the use of aggression to resolve conflicts."[63]

Surveys of the media violence literature by individual researchers reveal a much greater range of opinion on the impact of televised media violence. The majority of reviewers conclude that research has persuasively documented a causal link between media violence and aggression, and that this effect is significant.[64] Other commentators take the opposite position that the various methodological and data problems in the media violence research preclude the finding of any such link.[65] Finally, a number of reviewers adopt an intermediate position, viewing the evidence as suggestive, but not of a quality that persuasively documents a significant causal relationship.[66]

There does appear to be general agreement among researchers that whatever the impact of media violence, it likely explains a relatively small amount of the total variation in youthful violent behavior. As Huesmann *et al.* (1997) point out: "What is important for the investigation of the role of media violence is that no one should expect the learning of aggression from exposure to media violence to explain more than a small percentage of the individual variation in aggressive behavior."[67]

Another important area of apparent agreement among diverse groups of observers is an increasing recognition that the media-aggression relationship is a complex one that involves a number of mediating influences. Broader research into the causes of youth violence has identified interacting risk factors, such as genetic, psychological, familial, and socioeconomic characteristics.[68] Severe antisocial aggressive behavior appears to occur most often when more than one of these factors is present.[69] The typical profile of a violent youth is one who comes from a troubled home, has poor cognitive skills, and exhibits psychological disorders such as anxiety, depression, and attention deficit hyperactivity.[70] This configuration of risk factors makes attempts to isolate the independent effect of media violence difficult, because media violence can operate through many of the risk factors described above. As Huesmann and Eron remark: "[T]o understand the development of aggression, one must examine simultaneously a multiplicity of interrelated social, cultural, familial, and cognitive factors, each of which adds only a small increment to the totality of causation."[71]

Finally, there appears to be increasing recognition that future research needs to focus more on the *kinds* of media content most likely to result in aggressive behavior, rather than emphasizing general levels of violence in the media. The final report of the National Television Violence Study ("NTVS"), a three-year effort to assess violence on television, acknowledged this trend:

> Indeed, over the past decade, researchers have shifted attention away from investigating whether TV violence poses a problem, to focus on exploring conditions under which different kinds of negative consequences are more or less likely to occur. We now realize a need to look more closely at the nature of television content, asking not just how much violence occurs, but more important, how the medium portrays the motives and consequences of violence, its associated moods, its realism and so on – the context in which television portrays violence.[72]

III. CONTEXTUAL ANALYSIS OF TELEVISED VIOLENCE

Theoretical analyses of media violence have led researchers to recognize the importance of contextual clues in determining how an audience will react. The NTVS attempted to classify the contextual impacts of media violence by reviewing the relevant empirical research literature.[73] The NTVS staff found 80 experiments where some contextual feature of media violence was manipulated to see how it affected outcomes.[74] Based on these studies, the NTVS staff identified the following contextual features in violent media that can affect young viewers:

1) the attractiveness of the perpetrator;
2) the attractiveness of the victim;
3) whether the violence is justified;
4) the presence of weapons;
5) the extent and graphic quality of the violence;
6) the punishment and rewards from the violence;
7) pain/harm cues; and

8) humor.[75]

In particular, the shows deemed to pose the greatest risk for learning aggression were those where the perpetrator is attractive, there are morally justified reasons for the violence, the violence is realistic, is rewarded or goes unpunished, and the violence is presented in a humorous context.[76] Table 1 lists these characteristics and their predicted effects on aggression, fear, and desensitization.

Although the NTVS literature review represents an ambitious attempt to understand the way in which content and context can influence the impact of media violence, the authors of the study recognize that predicting the influence of particular kinds of media on behavior is far from an exact science:

> [T]elevised violence does not have a uniform effect on viewers. The relationship between viewing violence and subsequent behavior depends both on the nature of the depiction and the makeup of the audience. In some cases, the same portrayal of violence may have different effects on different audiences. For example, graphically portrayed violence may elicit fear in some viewers and aggression in others. Peer influence, family role models, social and economic status, educational level and the availability of weapons can each significantly alter the likelihood of a particular reaction to viewing violence on television.[77]

This uncertainty over effect is reflected in variations in the definition of violence used in studies attempting to monitor the degree of violence in television and how that definition has changed over time. In their review of the NTVS and other content-based analyses of violence on television, Potter *et al.* (1998) show that counts of violent episodes on television vary from 5.4 acts per hour to 38 per hour.[78] They note that the inclusion of acts of verbal aggression, accidents as well as intentional acts of violence, threats as well as acts involving actual harm, broaden the definition of violence.[79] Due to such disparities, some outside the scientific community, such as Edwards and Berman (1995), conclude that "the available research does not supply a basis upon which one could determine with adequate certainty whether a particular 'violent' program will cause harmful behavior."[80]

IV. ELECTRONIC GAMES

The bulk of research on media violence has focused on the content of television shows or movies. But the last 10 years have seen an important shift among young viewers toward alternative media formats, including electronic games, music videos, and the Internet. This section reviews research into electronic games, the most analyzed of these alternative media.

Much of the theory regarding the effects of electronic games follows from the analyses of violent media in general. Dill and Dill (1998), for example, hypothesize that aggressive traits generated from exposure to violent media are basically a learned behavior.[81] Because interactive games have been shown to be an especially effective learning medium, they deduce that the effects of game violence will tend to be even greater than similar content shown on a static medium such as television.[82]

Recent empirical investigations into the impact of violent electronic games include Funk (2000) and Anderson and Dill (2000).[83] Funk describes an extensive research program designed to assess the links between a child's preference for violent games and various sociological and psychological traits. Her empirical analysis so far has found that a preference for violent games is correlated with adjustment problems and negative self-perceptions in some groups of children.[84] Funk concedes that her research approach "cannot determine causal relationships. However, finding only negative associations suggest that a strong preference for violent games may at least be an indicator of adjustment issues for some children."[85]

Anderson and Dill (2000) use both correlational and experimental techniques to study the impact of electronic games on a sample of college students.[86] In the correlational phase, they report that real-life violent video game play is positively related to aggressive behavior and delinquency.[87] The relationship is stronger for persons with aggressive personalities and more pronounced for men.[88] In the experimental phase of the project, Anderson and Dill report that laboratory exposure to graphically violent video games increased aggressive thoughts and behavior in both males and females.[89] The convergence of findings from both the experimental and correlational stages of their study leads Anderson and Dill to conclude that their results lend "considerable strength to the main hypothesis that exposure to violent video games can increase aggressive behavior."[90]

Goldstein (2000) raises questions about both the experimental and correlational evidence in the violent game research.[91] He argues that a common flaw in most of the experimental studies is the failure to distinguish between aggressive play and aggressive behavior. According to Goldstein, most of the experiments measure only aggressive play, which can be viewed as a natural extension of the game. He contrasts this to the psychological definition of aggressive behavior which involves an intent to harm someone.[92] Goldstein states that studies distinguishing between the two concepts of aggression find that violent games stimulate aggressive play but not aggressive behavior.[93] In regard to correlational studies, Goldstein (2000) and Griffiths (1999) state the familiar criticism that observed associations between violent games and negative outcomes do not necessarily demonstrate that electronic games cause aggression: Goldstein explains that "[c]orrelation is not causality, no matter how tempted one may be to argue otherwise."[94] Anderson and Dill (2000) concur. Referring to their own correlational study, they caution that "causal statements are risky at best. It could be that the obtained video game violence links to aggressive and nonaggressive delinquency are wholly due to the fact that highly aggressive individuals are especially attracted to violent video games."[95] Anderson and Dill do, however, assert that the consistency in the results of their different types of experiments provides strong evidence for the hypothesis that exposure to violent video games can increase aggressive behavior.[96]

To conclude, most researchers are reluctant to make definitive judgments at this point in time about the impact of violent electronic games on youth because of the limited amount of empirical analysis that has so far taken place. Although some surveys of the literature lean toward seeing a detrimental effect from playing violent video games, others are more skeptical.[97] As additional research becomes available, these technical assessments may change.

TABLE 1

PREDICTED EFFECTS OF HOW CONTEXTUAL FEATURES CAN AFFECT THE RISKS ASSOCIATED WITH EXPOSURE TO TV VIOLENCE

	HARMFUL EFFECTS OF TV VIOLENCE		
	LEARNING AGGRESSION	FEAR	DESENSITIZATION
CONTEXTUAL FEATURES			
Attractive Perpetrator	▲		
Attractive Victim		▲	
Justified Violence	▲		
Unjustified Violence	▼	▲	
Conventional Weapons	▲		
Extensive/Graphic Violence	▲	▲	▲
Realistic Violence	▲	▲	
Rewards	▲	▲	
Punishments	▼	▼	
Pain/Harm Cues	▼		
Humor	▲		▲

Note: Predicted effects are based on review of social science research by NTVS staff on the different contextual features of violence. Blank spaces indicate NTVS staff's view that there is no relationship or inadequate research to make a prediction.

▲ = likely to increase the outcome
▼ = likely to decrease the outcome

source: *National Television Violence Study 3, infra* note 73, at 13 (table 1).

ENDNOTES

1. *See, e.g.*, L. Rowell Huesmann et al., *The Effects of Media Violence on the Development of Antisocial Behavior, in Handbook of Antisocial Behavior* 181 (David Stoff et al. eds., 1997) [hereinafter Huesmann et al., *Media Violence & Antisocial Behavior*]. *See also* Donald E. Cook, M.D., President, Am. Academy of Pediatrics; Clarice Kestenbaum, M.D., President, Am. Academy of Child & Adolescent Psychiatry; L. Michael Honaker, Ph.D., Deputy Chief Executive Officer, Am. Psychological Ass'n; & E. Ratcliffe Anderson, Jr., Am. Medical Ass'n, *Joint Statement on the Impact of Entertainment Violence on Children* (July 26, 2000) (released at Congressional Public Health Summit), www.aap.org/advocacy/release/jstmtevc.htm (visited Aug. 1, 2000) [hereinafter *Joint Impact Statement*].

2. *See, e.g.*, Sissela Bok, *Mayhem: Violence As Public Entertainment* 61-81 (1998).

3. *See* Jonathan L. Freedman, *Viewing Television Violence Does Not Make People More Aggressive*, 22 Hofstra L. Rev. 833 (1994) [hereinafter Freedman, *Television Violence*].

4. *See, e.g.*, Huesmann et al., *Media Violence & Antisocial Behavior, supra* note 1, at 183; *Joint Impact Statement, supra* note 1; National Institute of Mental Health, *Child and Adolescent Violence Research at the NIMH* (2000), www.nimh.nih.gov/publicat/violenceresfact.cfm (visited Aug. 14, 2000) [hereinafter NIMH, *Children and Adolescent Violence Research*].

5. *Compare* Freedman, *Television Violence, supra* note 3 *with* Huesmann et al., *Media Violence & Antisocial Behavior, supra* note 1.

6. As part of the Clinton Administration's initiative against youth violence, the President requested that the Surgeon General prepare a report on the causes of youth violence. *See* Opening Remarks by the President in White House Strategy Meeting on Children, Violence, and Responsibility (May 10, 1999), www.pub.whitehouse.gov/uri-res/I2R?urn:pdi://oma.eop.gov.us/1999/5/17/5.text.1 (visited Aug. 14, 2000).

7. *See* James Potter et al. *Content Analysis of Entertainment Television: New Methodological Developments, in Television Violence and Public Policy* 55, 57 (James T. Hamilton ed., 1998).

8. *See* Barrie Gunter, *The Question of Media Violence, in Media Effects: Advances in Theory and Research* 163, 169-76 (Jennings Bryant & Dolf Zillmann eds., 1994).

9. L. Rowell Huesmann & Leonard D. Eron, *The Development of Aggression in Children of Different Cultures: Psychological Processes and Exposure to Violence, in Television and the Aggressive Child: A Cross-National Comparison* 1, 14-16 (L. Rowell Huesmann & Leonard D. Eron eds., 1986) [hereinafter *Cross-National Comparison*].

10. *Id.* at 16.

11. *See generally* Marie-Louise Mares, *Positive Effects of Television on Social Behavior: A Meta-Analysis* (Annenberg Pub. Pol'y Ctr. U. Penn. Report No. 3 1996).

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12. *See generally* Gunter, *supra* note 8.

13. *See, e.g.*, Huesmann et al., *Media Violence & Antisocial Behavior*, *supra* note 1, at 184; Haejung Paik & George Comstock, *The Effects of Television Violence on Antisocial Behavior: A Meta-Analysis*, 21 Comm. Res. 516, 518-19, 536-38 (1994); Russell G. Geen, *Television and Aggression: Recent Developments in Research and Theory, in Media, Children, and the Family: Social, Scientific, Psychodynamic, and Clinical Perspectives* 151, 152 (Dolf Zillmann et al. eds., 1994).

14. *See, e.g.*, Gunter, *supra* note 8, at 170-71.

15. Huesmann et al., *Media Violence & Antisocial Behavior*, *supra* note 1, at 184 (citation omitted).

16. *Id.* at 185.

17. Haejung Paik & George Comstock, *Television and the American Child* 241 (1991).

18. Freedman, *Television Violence*, *supra* note 3, at 840-41.

19. *Id.*

20. *Id.*

21. *See* James Q. Wilson & Richard J. Herrnstein, *Crime and Human Nature* 346-48 (1985); *see also* Thomas G. Krattenmaker & Lucas A. Powe, Jr., *Regulating Broadcast Programming* 127-28 (1996).

22. *See, e.g.*, Huesmann et al., *Media Violence & Antisocial Behavior*, *supra* note 1, at 184.

23. William A. Belson, *Television Violence and the Adolescent Boy* (1978). The Belson study, although conducted at one point in time, asked questions relating to different periods in the past.

24. *Id.* at 15.

25. *See, e.g.*, Gunter, *supra* note 8, at 173-87; Huesmann et al., *Media Violence & Antisocial Behavior*, *supra* note 1; at 184-85; Paik & Comstock, *supra* note 17, at 242-54.

26. *See* Monroe M. Lefkowitz et al., *Television Violence and Child Aggression: A Followup Study, in Report of the Surgeon General's Scientific Advisory Committee on Television and Behavior: Television and Adolescent Aggressiveness (Reports and Papers Vol. 3)* 35 (George A. Comstock & Eli A. Rubenstein eds., 1972); *see also* L. Rowell Huesmann et al., *Stability of Aggression over Time and Generations*, 20 Developmental Psychol. 1120 (1984) [hereinafter *Stability of Aggression*].

27. *See* Lefkowitz et al., *supra* note 26, at 71.

28. *See* Huesmann et al., *Stability of Aggression*, *supra* note 26, at 1125-26.

29. L. Rowell Huesmann, *Cross-National Communalities in the Learning of Aggression from Media Violence, in Cross-National Comparison*, *supra* note 9, at 239, 254-55. These conclusions were challenged by Dutch researchers who were originally part of the international study. Publishing their own analysis of the international data, the Dutch researchers concluded that "there is almost no evidence for the hypothesis that television violence viewing leads to aggressive behavior or vice versa." O. Wiegman et al., *A Longitudinal Study of the Effects of Television Viewing on Aggressive and Prosocial Behaviors*, 31 Brit. J. of Soc. Psychol. 147, 159, 161 (1992). Wiegman et al.'s contrary findings are based on the use of statistical techniques that attempt to correct for the impact of violence risk factors, such as a child's intelligence, as well as preexisting levels of aggression.

30. J. Ronald Milavsky et al., *Television and Aggression: A Panel Study* (1982).

31. The tendency for other factors to be related both to exposure to media violence and to violent behavior was especially important in the analysis of boys. *Id.* at 483. Milavsky *et al.* report that the study "showed that many of the factors which were more strongly related than television exposure to the aggression of elementary school boys are also similarly related to teen aggression: living in neighborhoods and families where aggression occurs often, and being rejected by their mothers. In addition, the aggressive teen accepts aggression as a proper form of behavior and feels no regret when he is aggressive. He uses alcohol and has friends who use drugs. Most of these factors are predictors of his becoming more aggressive over time relative to teens who do not share such circumstances." *Id.* at 486.

32. *Id.* at 487.

33. Huesmann et al., *Media Violence & Antisocial Behavior*, *supra* note 1, at 185.

34. *Id.*

35. George Gerbner et al., *Growing up with Television: The Cultivation Perspective, in Media Effects: Advances in Theory and Research*, *supra* note 8, at 30.

36. *Id.*

37. *See* Bok, *supra* note 2, at 62; Gunter, *supra* note 8, at 183-86.

38. Bok, *supra* note 2, at 69.

39. Aletha C. Huston et al., *Big World, Small Screen: The Role of Television in American Society* 57 (1992) [hereinafter *Big World, Small Screen*]. For a fuller review of the evidence, some of which is not supportive of the desensitization theory, see Bok, *supra* note 2, at 67-76.

40. Huesmann & Eron, *in Cross-National Comparison*, *supra* note 9, at 14. The authors briefly note the existence of studies that "seem to support" the desensitization hypothesis, but they do not evaluate the studies' ability to identify a causal link. *Id.*

41. *See The Impact of Television: A Natural Experiment in Three Communities* (Tannis MacBeth Williams ed., 1986).

42. *Id.* at 312.

43. *Id.* at 314-18.

44. *Id.* at 319-20.

45. *Id.* at 401.

46. Jane E. Ledingham, et al., *The Effects of Media Violence on Children* 5 (Nat'l Clearinghouse on Fam. Violence, Canada, 1993), www.hc-sc.gc.ca/hppb/familyviolence/html/mediaviolence.htm (visited Aug. 14, 2000).

47. *Id.*

48. *Id.*

49. Brandon S. Centerwall, *Television Violence: The Scale of the Problem and Where to Go from Here*, 267 JAMA 3059 (1992).

50. *Id.* at 3060-61.

51. *Id.* at 3061.

52. *See* Bok, *supra* note 2, at 86; Krattenmaker & Powe, *supra* note 21, at 125.

53. *See* Edward Donnerstein & Daniel Linz, *The Media, in Crime* 237, 252 (James Q. Wilson & Joan Petersilia, eds., 1995).

54. *See* Wilson & Herrnstein, *supra* note 21, at 342-43.

55. *See, e.g.,* Wiegman, *supra* note 29.

56. Robert K. Baker & Sandra J. Ball, *Mass Media and Violence: A Staff Report to the National Commission on the Causes and Prevention of Violence* (1969).

57. Surgeon General's Scientific Advisory Committee on Television and Social Behavior, *Television and Growing Up: The Impact of Televised Violence* (1972).

58. 1 National Institute of Mental Health, *Television and Behavior: Ten Years of Scientific Progress and Implications for the Eighties* (David Pearl et al. eds., 1982).

59. Group for the Advancement of Psychiatry, *The Child and Television Drama: The Psychosocial Impact of Cumulative Viewing* (1982).

60. 1 American Psychological Association, *Violence & Youth: Psychology's Response – Summary Report on the American Psychological Association Commission on Violence and Youth* (1993).

61. *See generally* John P. Murray, *The Impact of Televised Violence*, www.ksu.edu/humec/impact.htm (visited Aug. 14, 2000).

62. 1 NIMH, *supra* note 58, at 6. Subsequently, the National Research Council ("NRC"), a quasi-governmental agency, convened a panel of experts to review the NIMH study. The NRC concluded that televised violence "may be related" to aggression, but that the magnitude of the relationship is small and the meaning of aggression is unclear. National Academy of Sciences/National Research Council, *Children and TV Violence: Where Do We Go from Here?*, *News Report* 8 (March 1983).

63. Huston, *Big World, Small Screen, supra* note 39, at 136.

64. *See, e.g.*, Donnerstein & Linz, *supra* note 53, at 237 ("Media violence is also a causal factor in the stimulation of violent behavior including crime."); Huesmann et al., *Media Violence & Antisocial Behavior, supra* note 1, at 190 ("viewing media violence stimulates aggressive behavior in children"); Donald F. Roberts, *Media Content Labeling Systems, in A Communications Cornucopia: Markle Foundation Essays on Information Policy* 350, 354 (Roger G. Noll & Monroe E. Price eds., 1998) (noting "unequivocal conclusion that exposure to mass media portrayals of violence contributes to aggressive attitudes and behavior in children, adolescents, and adults").

65. *See, e.g.*, Jonathan L. Freedman, *Remarks Before the House Bipartisan Task Force on Youth Violence* 1 (Oct. 1, 1999) ("The available studies provide no convincing evidence that viewing violence on television or in the movies causes aggression or crime and quite of bit of evidence that it does not.") (on file with the Commission); Jonathan Kellerman, *Savage Spawn: Reflections on Violent Children* 72 (1999) (stating that "not a single causal link between media violence and criminality has ever been produced").

66. *See, e.g.*, Dora Black & Martin Newman, *Television Violence and Children*, 310 Brit. Med. J. 273, 273; Bok, *supra* note 2, at 87; Gunter, *supra* note 8, at 201-02.

67. Huesmann et al., *Media Violence & Antisocial Behavior, supra* note 1, at 183. A prominent exception to this view is Centerwall (1992), who believes that television is a major reason for increased crime rates in Western society. But Centerwall's evidence relates to all television content, not just the entertainment component that is the focus of this review. Centerwall, *supra* note 49.

68. *See generally* National Research Council, *Perspectives On Violence, in Understanding and Preventing Violence: Panel on the Understanding and Control of Violent Behavior* 101 (Albert Reiss, Jr. & Jeffrey Roth eds., 1993); Huesmann & Eron, *in Cross-National Comparison, supra* note 9, at 1-27; NIMH, *Children and Adolescent Violence Research, supra* note 4.

69. Huesmann et al., *Media Violence & Antisocial Behavior, supra* note 1, at 183.

70. *See generally* note 68, *supra*.

71. Huesmann & Eron, *in Cross-National Comparison, supra* note 9, at 4.

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72. 3 University of California, Santa Barbara et al., *National Television Violence Study: Executive Summary* 13 (Joel Federman ed., 1998) [hereinafter *NTVS Executive Summary*].

73. The NTVS, initiated in 1994, was a three-year effort to assess violence in television programming. The project was funded by the National Cable Television Association, and involved media researchers from four universities, as well as representatives from various policy and advocacy organizations. The results from the NTVS are set forth in three volumes. *See NTVS Executive Summary, supra* note 72; University of California, Santa Barbara et al., *National Television Violence Study 3* (Center for Communications and Social Policy, University of California, Santa Barbara eds.,1988) [hereinafter *NTVS Report*]; University of California, Santa Barbara et al., *National Television Violence Study: Scientific Papers 1994-95* (Mediascope, Inc. ed., 1996) [hereinafter *NTVS Scientific Papers*].

74. *NTVS Scientific Papers, supra* note 73, at I-15.

75. *NTVS Report, supra* note 73, at 11-19.

76. *Id.*

77. *Id.* at 3.

78. Potter, *supra* note 7, at 57.

79. *Id.* at 58. The authors also note that differences in the definition of media violence also influence researchers' selection of a unit of analysis (*e.g.*, each violent act in a narrative scene versus average numbers of acts per program) and their sample of television programs. *Id.* at 57-61.

80. Harry T. Edwards & Mitchell N. Berman, *Regulating Violence on Television*, 89 Nw. U. L. Rev. 1487, 1533 (1995).

81. Karen E. Dill & Jody C. Dill, *Video Game Violence: A Review of the Empirical Literature*, 3 Aggression and Violent Behavior 407, 409-14 (1998).

82. *Id.* at 411-14.

83. *See* Craig A. Anderson & Karen E. Dill, *Video Games and Aggressive Thoughts, Feelings, and Behavior in the Laboratory and in Life*, 78 J. Personality & Soc. Psychol. 772 (2000); *The Impact of Interactive Violence on Children: Hearings Before the Senate Comm. on Commerce, Science and Transp.*, 106th Cong. (2000) (written testimony of Jeanne B. Funk, Ph.D.), *reprinted at* 2000 WL 11070123.

84. Funk, *supra* note 83, 2000 WL 11070123, at *4-5.

85. *Id.* at *5.

86. Anderson & Dill, *supra* note 83.

87. *Id.* at 778-82.

88. *Id.* at 782.

89. *Id.* at 785-87.

90. *Id.* at 787.

91. *See The Impact of Interactive Violence on Children: Hearings Before the Senate Comm. on Commerce, Science and Transp.*, 106th Cong. (2000) (written testimony of Jeffrey Goldstein, Ph.D.), *reprinted at* 2000 WL 11069631.

92. *Id.* at 11069631, at *5-6.

93. *Id.* at *7 (citing Joel Cooper & Diane Mackie, *Video Games and Aggression in Children*, 16 J. Applied Soc. Psychol. 726 (1986), and Joop Hellendoorn & Frits J.H. Harinck, *War Toy Play and Aggression in Dutch Kindergarten Children*, 6 Soc. Dev. 340 (1997)).

94. *Id.* at *4; *accord* Mark Griffiths, *Violent Video Games and Aggression: A Review of the Literature*, 4 Aggression & Violent Behavior 203, 206 (1999).

95. Anderson & Dill, *supra* note 83, at 782.

96. *Id.* at 787.

97. *Compare* Dill & Dill, *supra* note 81, at 424 ("short term exposure to video-game and virtual reality violence engenders increase in aggressive behavior, affect, and cognitions and decreases in pro-social behavior") *with* Griffiths, *supra* note 94, at 211 ("[T]he question of whether video games promote aggressiveness cannot be answered at present because the available literature is relatively sparse and conflicting, and there are many different types of video games which probably have different effects.").

Appendix B

CHILDREN AS CONSUMERS OF ENTERTAINMENT MEDIA: MEDIA USAGE, MARKETING BEHAVIOR AND INFLUENCES, AND RATINGS EFFECTS

I. INTRODUCTION: YOUTH AS A CONSUMER MARKET

American children's unprecedented spending power holds considerable appeal for marketers. Older children, ages 12 to 19, spent more than $94 billion of their own money in 1998.[1] Younger children, ages 8 to 12, spent $11.9 billion of their own money in 1997, an increase of 300% since 1989.[2] In addition, children spend money they receive from their parents or other adults. Including these funds, Teen Research Unlimited ("TRU") estimated in its semi-annual *Teenage Marketing and Lifestyle Survey* that children ages 12 to 19 spent more than $153 billion in 1999, up from $140 billion in 1998.[3] The average teen spends $56 of his or her own money and $28 of his or her parents' money per week.[4] Teens also influence substantial additional family spending by expressing their preferences for certain products or brands that their parents then purchase.

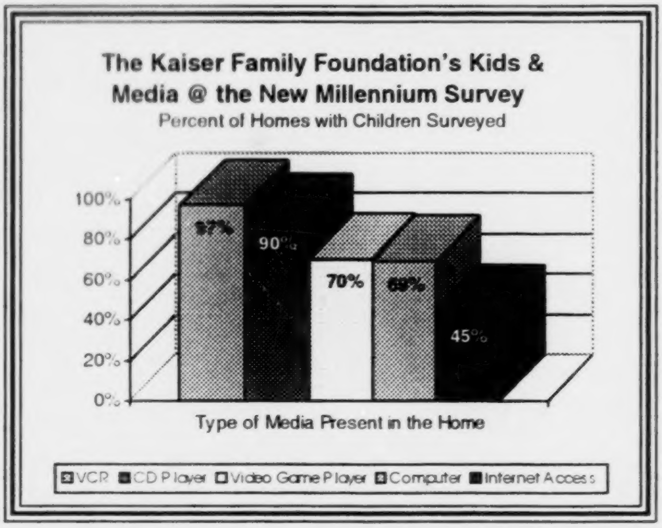
Apart from their spending power, teens are an important market for other reasons. Teens set trends, both for their peers and for younger children who emulate them. Teens are a "future market": by winning the business of a teen, a company may be able to create a lifelong loyal customer. They are an attractive market for entertainment companies, in particular, due to their heavy usage of entertainment media.[5] The *1999 Roper Youth Report* confirmed that teens, in contrast to adults, are able to spend much of their money on discretionary purchases like movies, CDs, and electronic games.[6] Of the $140 billion teenagers spent in 1998, $22 billion was spent on entertainment products.[7]

This Appendix addresses the relationship of children, especially teenagers, to the world of entertainment and entertainment marketing: (a) their use of entertainment media; (b) the influence of parents, peers, and advertising and marketing in shaping children's media exposure and consumption; (c) the specific techniques used by industry to promote its products to children; and (d) the potential influence of entertainment ratings on children's purchasing decisions.

II. CHILDREN'S ENTERTAINMENT MEDIA USAGE

Children today face an entertainment media environment that has changed significantly over the last three decades, when network television, radio, and the record album were the dominant forces. Since then, new media have emerged to compete for audience share: cable and satellite television; videotapes; cable radio; cassette tapes, CDs, and mini-disk or MP3 players; video games; computers; and the Internet.

Children are avid consumers in this rich media environment, spending significant time with both old and new media. Data about children's movie watching, game playing, and music listening habits illustrate the ubiquity of these media and their importance in the lives of American children. The 1999 Kaiser Family Foundation's *Kids & Media @ the New Millennium Survey* found that 97% of homes with children have a VCR, 90% have a CD player, 70% have a video game player, 69% have a computer, and 45% have Internet access.[8] Moreover, results of the Annenberg Public Policy Center's *Media in the Home 2000: The Fifth Annual Survey of Parents and Children*, show that 78% of homes with children have basic cable and 31% have premium cable.[9]



A. *Entertainment Media Usage: Movies*

Seeing movies at the theater is a favorite social activity among teens. The Motion Picture Association of America ("MPAA") estimates that although 12- to 17-year-olds make up less than 10% of the population, they purchase 17% of movie tickets.[10] Roper Youth Report data indicate that almost one third of 13- to 17-year-olds report seeing movies in theaters a couple of times each month.[11] A majority (63%) of 9- to 17-year-olds find it "important" to see the latest movies.[12] "Tweens" (8- to 13-year-olds) spend the most time at the theater, on average, spending three hours per week.[13] Action films are the most popular genre at the theater among youngsters, with comedy second.[14]

Home video watching is even more popular among children. Although nearly 18% of 8- to 17-year-olds reported that they had seen a movie on the previous day, 56% reported that

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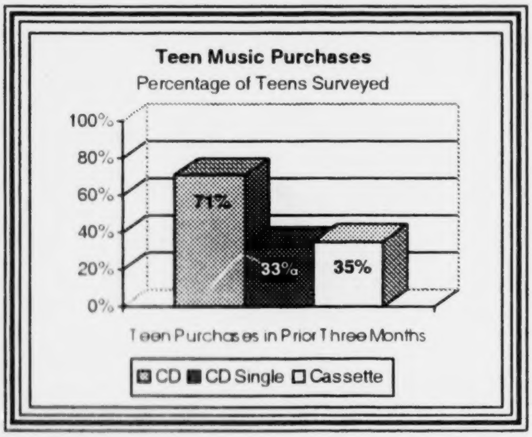
they had viewed a videotape the previous day.[15] Three in five (62%) children ages 9 to 17 report that they watch a video once a week or more.[16] Children ages 2 to 17 spent an average of 52 minutes per day watching videotapes.[17] Action and comedy films are at the top of the older children's preference lists.[18]

B. Entertainment Media Usage: Music

Music provides the "soundtrack to teens' lifestyles," vying with television as a focal point of teens' interest.[19] At times, children listen to music as a primary, or exclusive, activity. They also read, do homework, talk with friends, and engage in other activities while music plays in the background. It is not surprising, then, that the time children spend listening to music nearly rivals the time they spend watching television. Youth between the ages of 2 and 18 spend an average of one hour and 27 minutes listening to music each day.[20] This average increases significantly with age: teens 14 to 18 listen to music almost twice as much as younger children, 2 1/2 hours per day on average.[21]



Children, especially teens, are active music consumers. One study reported that 71% of teens had purchased at least one full-length CD, 33% had bought a CD single, and 35% had bought a full-length cassette in the three-month period preceding the study.[22] The most popular purchase for teens on the Internet is music.[23] Aside from listening to music they have purchased, youth listen to music by watching music videos or by listening to the radio. The data show that youth use radio primarily to listen to music rather than news, sports, or other formats: regardless of age, music exposure time is always more than double the exposure to all other radio formats combined.[24] Music videos are another key avenue of exposure: more than half of children aged 9 to 17 watch music videos.[25] Whatever the format, rap/hip-hop and alternative rock are the two types of music that currently dominate among teens, with R&B close behind.[26]

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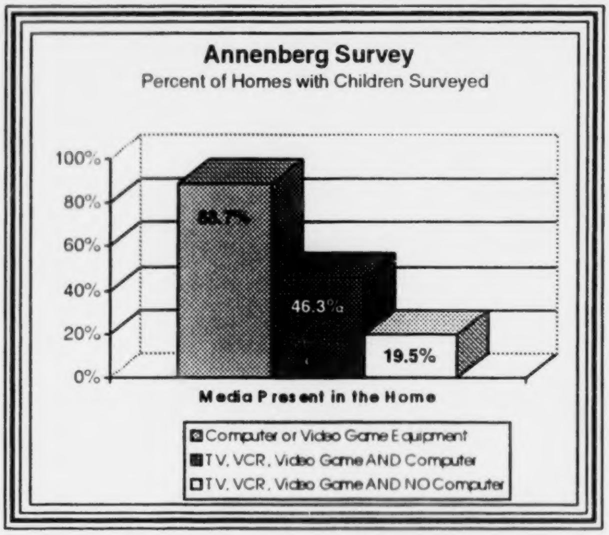
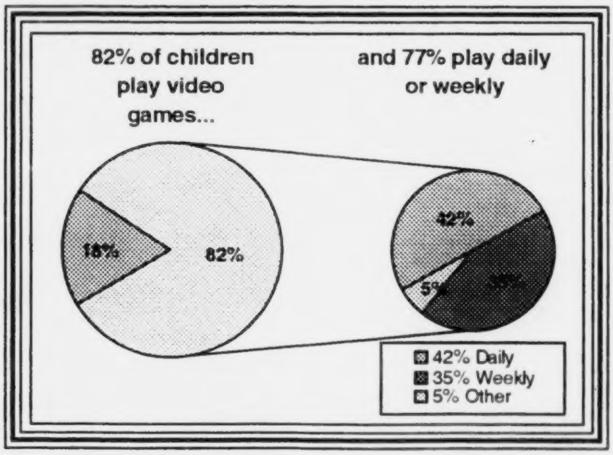
C. *Entertainment Media Usage: Electronic Games*

Despite their relative newness, electronic games, whether played on a personal computer ("computer games") or on a hand-held machine or game console ("video games"), have achieved substantial penetration. Almost nine in ten homes with children (88.7%) have either a personal computer or video game equipment.[27] Slightly less than half (46.3%) of homes with children own a TV, VCR, video game equipment, *and* a computer; an additional 19.5% of the homes have a TV, VCR, and video game equipment but no computer.[28] Though having a computer does not necessarily equate to playing computer games, gaming is the most popular way in which youngsters use computers, comprising the majority of recreational computer use.[29]



The National Public Radio/Kaiser Family Foundation/John F. Kennedy School of Government *Kids and Technology Survey* indicated that 82% of the children surveyed play video games.[30] Of those, more than two in five (42%) play almost every day, while 35% play about once a week.[31] Children on average spend 33 minutes per day playing video games; however, this figure does not include time spent on the computer (34 minutes per day), part of which is spent playing computer games.[32] Many surveys have shown that electronic games are more



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popular with boys than girls, with the difference in time spent playing games most pronounced for video games.[33] Action games are the most popular genre among youths, closely followed by sports-related games and adventure games.[34]

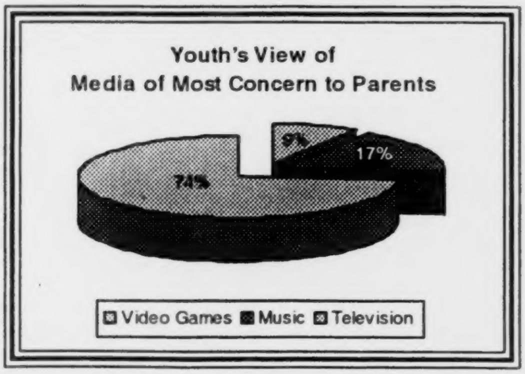
III. INFLUENCES ON CHILDREN'S MEDIA EXPOSURE

A. *Parents' Influence and Concerns*

Parents have a substantial impact on their children's media exposure (as do other adults such as teachers and relatives). Parents may exert influence by restricting a child's access or exposure to some media depending on its content, limiting the time spent with media, discussing media with children to help them understand and interpret it, or providing supplementary sources of information.[35]

Parents' attitudes toward the media are by no means uniform: research suggests that parents have different "styles," from "neglectful" to "permissive" to "authoritarian," that affect the extent and nature of their involvement in their children's media use.[36] Despite varying parental styles, the *Media in the Home 2000* study indicates two factors affecting parental concerns about media influences upon their children: the child's age and the medium.[37] As to age differences, parents of younger children (ages 6-11) spent more time supervising their children's video game playing, music listening, and television watching.[38] Similarly, the *1999 Roper Youth Report* found that parents had more rules for younger versus older youth regarding television shows viewed, movies watched on the VCR, music listened to, and time spent playing video games.[39] The Internet was the only entertainment medium for which parents more closely supervised teenagers than younger children.[40]

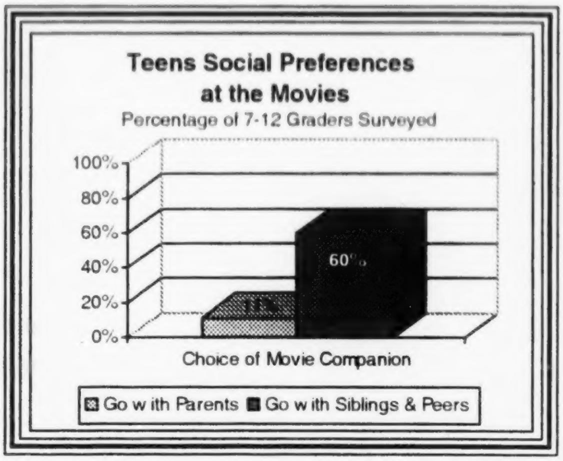
One survey by Christenson (1997)[41] asked youth which medium was of most concern to their parents. Only 9% of youth said video games, compared to 17% who said music and 74% who said television. According to Christenson, certain media are more visible to parents than others, because of where or how they are used, or because parents are detached or alienated from other



media's content and form. He explains that music and video games are less "visible" to parents than movies and television, and demonstrates that parents regulate television and movies more than video games and music.

Parental concerns about media exposure do not always translate into action. A significant percentage of children report that they pick out music (42%), video games (32%), movies (26%), and rental movies (30%) without needing to ask a parent before choosing.[42] Few adolescents report that their parents accompany them to music stores, cull through their CD collections, or otherwise interfere with their freedom to select and listen to "whatever music suits them."[43] Likewise, 49% of children with video game equipment say that their parents do not have rules about the content of the video games they play.[44] And, again, age is a key factor: the number of children who usually are able to make purchases without consulting their parents is significantly higher for older versus younger children.[45]

Parental concern also does not necessarily lead parents to use media alongside their children. Only 11% of 7th through 12th graders go to the movies with their parents – compared to 60% who attend with siblings or peers.[46] In fact, two thirds of teens in the TRU study named movie-going as something they explicitly do not like to do with their parents.[47] Teens are more open to watching videos with their parents: A quarter indicated that they sometimes watch videos with their parents.[48] Only 31% of teens in the TRU study noted watching videos at home as something they explicitly do not like to do with their parents.[49]



The same holds true for electronic games. Despite the popularity of multiplayer gaming on the Internet – sites that allow a number of users to log in and compete against other players over the modem – playing electronic games is a relatively solitary activity for most children. In the *Kids & Media @ the New Millennium* study, 55% of children surveyed reported that they play video games mainly alone (64% play computer games mainly alone).

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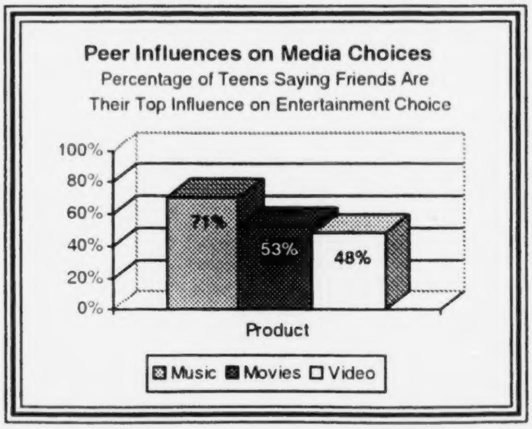
while only 36% reported that they play video games in the presence of peers and/or siblings (only 13% play computer games with peers and/or siblings).[50] Further, 63% of teens noted game playing as something they do not like to do with their parents.[51]

One phenomenon that might decrease parental supervision of media usage is that the media are no longer enjoyed principally in the family living room or other shared space. Given the popularity of portable personal devices, such as handheld video game players and portable CD players, and the substantial number of children who have entertainment media such as video game equipment in their own bedrooms, the fact that many children use entertainment media without parental supervision should come as no surprise. According to the *Kids & Media @ the New Millennium* survey, about two in three children (70%) have a radio and nearly as many (64%) have a tape player in their room; more than half (51%) a CD player; one third (33%) a video game player; 29% a VCR; and 16% a computer (7% with Internet access) in their bedroom.[52]

B. Peer Influence

As noted above, parental involvement, monitoring, and influence decrease as children age. At the same time, teens begin to rely more on other information sources including, in particular, their peers.[53] As children approach adulthood, they become uncertain about the self, and the need to belong and to find one's unique identity as a person becomes very important. In fact, conformity to peer pressure is considered to be one of the hallmarks of adolescent behavior.[54]

Fifty-one percent of teens ages 12 to 17 cite their friends as the biggest influence on how they spend their money.[55] Further, teens cite friends as the top influence on the music they listen to (71%) and the movies they see in the theater (53%) or on video (48%).[56] With some variation, peer effects may enhance or detract from parental effects.[57] After all, as the media usage data indicate, it is often a child's peers, not his or her parents, who engage the media with the



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child. For example, far fewer older children go to the movies with their parents than with siblings or peers.[58]

C. Advertising and Marketing Influence

Although parents and peers are key sources of information and influence,[59] advertising and other marketing efforts also influence children's behavior as consumers of movies, music, and games. Parents and peers are themselves influenced by marketing, and marketing messages may reinforce or undermine parent and peer messages. Marketing efforts are thus part of an ongoing and dynamic social process that shapes teen consumer behavior.

Advertising is a prime influence on how children spend their money and children's consumption of entertainment media. In one study, researchers asked children ages 8 to 17 whether, in the last 30 days, they had purchased or asked their parents to purchase a particular item for them after seeing it advertised. More than one in four (29%) of the children surveyed reported that they had purchased or asked a parent to purchase a particular CD or cassette after seeing the ad, and the data for movie video rentals (28%) and video games (25%) were comparable.[60] More teens reported that they rely on advertising when making purchasing decisions than did younger children.[61] Moreover, 20% of teenagers selected advertising as one of the factors that influenced their spending, along with such factors as parents, siblings, friends, teachers, and television.[62]

Aside from influencing the decision to purchase a product, advertising has other effects. According to some researchers, as children become adolescents, advertising serves as a basis for social interaction, providing a topic of conversations with peers, a means of belonging and group membership, and a way of conveying meaning in their daily lives.[63] Some of the advertising and marketing techniques the entertainment industry uses to reach children are set out below.

IV. ENTERTAINMENT INDUSTRY MARKETING TECHNIQUES

Given the importance of the teen market, entertainment marketers work hard to influence teens' consumer attitudes and behaviors. They employ research to understand teens' attitudes, beliefs, habits, and practices in order to develop effective marketing strategies. Entertainment companies use a variety of methods ranging from qualitative (*e.g.*, focus group discussions, participant observation) to more quantitative approaches (*e.g.*, surveys, experiments) to research the young consumer at every stage of the marketing process. Although the marketing strategies for the movie, music, and electronic game industries each differ somewhat, based on the nature of the product and industry structure, similarities exist across the industries. In implementing the marketing strategy, marketers in each of the industries use two broad approaches to target teens: (i) persuasive techniques (talking to teens in a way that resonates) and (ii) media placement (going where teens are).

A. Persuasive Techniques

The development of persuasive marketing communications, such as advertising, is based on the psychology of how people respond to marketing efforts. Marketers recognize that youth are different from adults based on such psychological factors as cognitive development levels, knowledge, and experience that have been identified in the academic literature. For example, a recent review of how children are socialized into consumers characterizes three broad stages of development, corresponding to the ages 3 to 7 (perceptual stage), 7 to 11 (analytical stage), and 11 to 16 (reflective stage).[64] Each stage captures shifts in youths' knowledge, development, decision-making skills, and purchase influence strategies. Older children are often divided into two segments based on lifestyle stages: "tweens" and teens. Tweens (also called "young teens") encompass those youths who are no longer "children," but not yet "teenagers."[65] The precise age cut-offs between tweens and teens vary: tween is more of a state of mind than a specific age, when youths are caught developmentally between childhood and adolescence.[66]

Marketers take advantage of children's "age aspiration" behavior to link their strategies for marketing to the teen and tween cohorts. Generally, youth "aspire up" in their consumer behavior, trying to "live a step or two ahead of where they really are."[67] Children watch their older siblings, those ahead of them in school, older children in the neighborhood, and older teens in the media, and desire aspects of their lifestyles and behaviors. The gap in teens' actual age and aspired age shrinks as they get older. One study found that while younger teens (12- to 15-year-olds) aspire to be three to five years older than they are, older teens are more content enjoying the activities (like driving) that younger teens yearn to do.[68]

Further, there is a general belief that children are maturing more quickly than in past generations, which affects the type of marketing efforts directed towards them.[69]

Entertainment industry marketers employ a wide range of traditional advertising and promotional techniques to reach teens, often changing the focus to be more relevant to teens. For example, to reach 12- to 15-year-olds, advertisers might use 17-year-old actors, who will appeal to children their own age as well as to younger children, given age aspirations.[70] Teen-targeted promotions may include sweepstakes, games, in-store rebates, contests, sampling, and point-of-purchase materials. Because teens do not receive the volume of mail that adults do, they may be more attentive to direct marketing offers.[71]

Teens, in particular, are seen as a unique target market with particular characteristics that dictate the types of strategies needed to communicate effectively with them. Marketers view teens as savvy about marketing and likely to reject messages perceived as patronizing or trying too hard to be "cool," so that marketing to teens calls for more subtle methods.[72] Advertisers have found that teens have little patience for hype or pretentious ads and prefer ads that talk to them in realistic ways and focus on their actual lifestyles.[73]

B. Media Placement

The second key way marketers target youth is to "go where they are." There are a multitude of media and vehicles targeted at youth, such as cable music networks, teen-oriented magazines, teen-oriented Web sites, and lifestyle special events, that make the elusive teen easier to reach.[74] Marketers also recognize that substantial numbers of youth comprise the audience of media intended for a general audience, such as general circulation magazines or television shows that are popular with both adults and children.[75] Entertainment marketers look not only to reach teens but to be pervasive in the market throughout the day, whether at home, school, or out and about.[76]

Marketers also use a variety of less traditional techniques to communicate to teens. Recently, a small industry of companies that market to youth in educational settings has grown up. One example is Channel One, which provides schools with a brief 12-minute news program that incorporates two minutes of advertising, including ads for entertainment products.[77] Another company, Backstage Pass, introduces students to recording artists by means of CD giveaways and posters in school cafeterias.[78] ZapMe! Corp. provides schools with Internet access, computers, tech support, and maintenance; in exchange, the schools must promise that a student will use each computer for at least four hours daily while a two-inch by four-inch banner ad appears constantly on the screen.[79]

Another technique that is less well known outside the marketing world is street or lifestyle marketing. Street marketing involves making a product a "natural" part of teens' lifestyles and is a key technique used in the music industry.[80] The goal is to reach teens where they "hang out" – at concerts, coffee shops, arcades, and other gathering spots. Specific tactics include hanging posters, giving away CDs or T-shirts, distributing flyers or postcards with the marketing message, generating word of mouth, and encouraging DJs to play records.[81] The entertainment industry has brought street marketing to the Internet as well, offering free T-shirts and CDs to teens who spread the word about music or movies on fan site postings or through email.[82]

Entertainment companies are also creative in joining together to produce marketing synergies, employing a range of options including partnerships, licensing agreements, or joint promotions. An electronic game company might license a game character to a toy company to make an action figure, or to a movie studio to make a film. Companies selling different types of products ally to cross-market. For example, in the film industry, cross-marketing and product placements give additional exposure to products or music featured in a film.[83] Audience members may not be consciously aware of these in-film marketing efforts, and such techniques may prompt inferences that the product is a part of the movie character's lifestyle.[84] The ads reach a captive audience, and may have higher recall than some other advertising techniques.[85]

Finally, the emergence of the Internet as a focus for teens has led companies to advertise online, where the interactive nature of the medium carries the additional promise to marketers of obtaining consumer feedback while promoting their products. One recent survey indicates that two thirds of teenagers have either researched products or purchased products online.[86]

V. DOES RATING INFORMATION AFFECT CHILDREN'S BEHAVIOR?

The entertainment industry developed the movie and game ratings and music advisory label to inform parents about the product's content. In some but not all instances, these ratings and labels may also be communicated to children through advertising, marketing, and product packaging, raising the question whether this information directly affects children's behavior. A number of academic studies suggest that this rating/labeling information does affect children's behavior, although its precise effects are uncertain.

A child might respond to information restricting access to material as if the restricted material were "forbidden fruit," leading the child to resist the restriction and seek out the restricted material.[87] By contrast, children might view restricted material as if it were "tainted fruit," leading them to avoid content with which they might not be comfortable.[88] In that case, a rating restriction or advisory would directly dampen a child's interest in the material, apart from the indirect role the information might play in facilitating parents' efforts to reduce the child's exposure to restricted material.

Studies on the impact of rating information on children's attraction to restricted entertainment media products suggest that both of these phenomena may occur, depending on such factors as the age and gender of the child and the format of the rating itself. For example, Morkes, Chen, and Roberts (1997)[89] tested middle school students' responses to MPAA movie ratings, Recreational Software Advisory Council ("RSAC") electronic game advisories, and television ratings. The students read brief descriptions of a film, a television program, and a game, each randomly labeled with one of the ratings appropriate to the medium, and graded the attractiveness of each. For the movie ratings, children's desire to view the film increased as the MPAA age restriction increased: students preferred PG-13- and R-rated films to both G- and PG-rated films. This result was driven primarily by boys' responses. For games, while the RSAC rating information had no effect on girls, boys preferred games rated with the level 3 advisory ("Blood and Gore") significantly more than games with the lower ratings. By contrast, analysis of the responses regarding television ratings found no ratings effects.[90]

There are also some studies suggesting the existence of a tainted fruit effect, at least with younger children. For example, in an experiment by Christenson (1992) that tested the effects of the parental advisory label used by the Recording Industry Association of America, middle school students who listened to music while viewing an album's cover gave lower evaluations to the music when the album cover had an advisory label than when the album cover had no label.[91] Youth in the study also reported less interest in buying explicit-content labeled albums.

Though some studies show little or no effect of rating or labeling information on children, at least for certain rating or advisory formats,[92] the research taken as a whole suggests that entertainment media ratings do have some impact on children's media choices, impact that may depend on factors such as age, gender, the format and type of rating information, and the medium involved.[93] The clear message of this research is that ratings or advisory labels may have not only intended, but also unintended, effects on youth that should be considered in determining how best to communicate this type of information.

ENDNOTES

1. Peter Zollo, *Wise Up to Teens: Insights into Marketing and Advertising to Teenagers* 9 (1999) [hereinafter *Wise Up to Teens*]. *Wise Up to Teens* is based on Teen Research Unlimited's syndicated, semi-annual *Teenage Marketing and Lifestyle Study*, which surveys more than 2000 youth ages 12-19. Marketers use the study, conducted since 1983, to help make their products, marketing, and advertising efforts compelling and relevant to teens.

2. Barbara Kantrowitz & Pat Wingert, *It's Their World: A Guide to Who's Hot*, Newsweek, Oct. 18, 1999, at 62.

3. Teenage Research Unlimited, *Teens Spend $153 Billion in 1999*, www.teenresearch.com/news/bodynews.html (visited June 16, 2000).

4. *Wise Up to Teens*, *supra* note 1, at 7-8.

5. For data on media usage, see *infra* Section II.

6. *Wise Up to Teens*, *supra* note 1, at 50-51; Roper Starch Worldwide, *1999 Roper Youth Report* 201-03 (1999) [hereinafter *1999 Roper Youth Report*].

7. Rachel McLauglin, *Targeting Teens*, 23 Target Marketing 84 (2000).

8. The Henry J. Kaiser Family Foundation, *Kids & Media @ the New Millennium* 9 (1999) [hereinafter *Kids & Media @ the New Millennium*]. Data released in June 2000 by the Annenberg Public Policy Center essentially track these results, with the exception that the more recent data reflect the speed with which American families have adopted the Internet: 52% of homes with children had Internet access in the later survey, up from 32% in 1998. Emory H. Woodard, IV & Natalia Gridina, *Media in the Home 2000: The Fifth Annual Survey of Parents and Children* 8 (Annenberg Pub. Policy Ctr. U. Pennsylvania 2000) [hereinafter *Media in the Home 2000*]. The Annenberg Center's 1999 survey of media in the home, Jeffrey D. Stanger & Natalia Gridina, *Media in the Home 1999: The Fourth Annual Survey of Parents and Children* 11 (Annenberg Pub. Policy Ctr. U. Pennsylvania 1999) [hereinafter *Media in the Home 1999*] also contains relevant information.

9. *Media in the Home 2000*, *supra* note 8, at 8.

10. *NATO 1999-2000 Encyclopedia of Exhibition* at 362, 364 (citing MPAA estimates for 1998); *see also* Robin Rauzi, *The Teen Factor: Today's Media-Savvy Youths Influence What Others Are Seeing and Hearing*, L.A. Times, June 9, 1998, at F1 [hereinafter *The Teen Factor*].

11. *1999 Roper Youth Report*, *supra* note 6, at 109.

12. Yankelovich Partners, *Nickelodeon/Yankelovich Youth Monitor* (1997) (*cited in Issue Brief Series, Popular Culture & the American Child* (1999)).

13. *Kids & Media @ the New Millennium*, *supra* note 8, at 21.

14. *Id.* at 50.

15. *1999 Roper Youth Report*, *supra* note 6, at 65.

16. The 1998 Yankelovich/VSDA Home Entertainment Study (*cited in Issue Brief Series, Media Use in America* (1999)).

17. *Media in the Home 2000*, *supra* note 8, at 19.

18. *Kids & Media @ the New Millennium*, *supra* note 8, at 50.

19. Peter G. Christenson & Donald F. Roberts, *It's Not Only Rock and Roll: Popular Music in the Lives of Adolescents* 33-39 (1998) [hereinafter *It's Not Only Rock and Roll*].

20. *Kids & Media @ the New Millennium*, *supra* note 8, at 37-39 (compared to 2 hours 46 minutes per day watching television).

21. *Id.*

22. *The Teen Factor*, *supra* note 10.

23. Michiyo Yamada, *Market Spotlight: Today's Teens, Tomorrow's Net Consumers*, The Standard (June 14, 1999), www.thestandard.com.

24. *Kids & Media @ the New Millennium*, *supra* note 8, at 37, 39.

25. Peter G. Christenson & Donald F. Roberts, *Popular Music in Early Adolescence*, Carnegie Council on Adolescent Development Working Papers 1990 (*cited in Issue Brief Series, Popular Culture & the American Child* (1999)). Christenson and Roberts found that more than three quarters of children aged 9 to 17 (75% of 9- to 12-year-olds, and 80% of 12- to 14-year-olds) watched music videos. *Id.* Annenberg reported that over 50% of youth ages 10 to 17 watched MTV each year from 1996 to 1999. *Media in the Home 1999*, *supra* note 8, at 11.

26. *Wise Up to Teens*, *supra* note 1, at 71.

27. *Media in the Home 1999*, *supra* note 8, at 7.

28. *Id.* at 7. According to *Media in the Home 2000*, *supra* note 8, at 7, 48% of homes have all four media hardware, an increase from 40% in 1998 and 34% in 1997.

29. *Kids & Media @ the New Millennium*, *supra* note 8, at 32-33.

30. National Public Radio, The Henry J. Kaiser Family Foundation, Kennedy School of Government, *Kids & Technology Survey* (Feb. 2000), www.npr.org/programs/specials/poll/technology/technology.kids.html (visited Sept. 1, 2000).

31. *Id.*

32. *Media in the Home 2000*, *supra* note 8, at 19.

33. *1999 Roper Youth Report*, *supra* note 6, at 165; *Kids & Media @ the New Millennium*, *supra* note 8, at 40.

34. *Kids & Media @ the New Millennium*, *supra* note 8, at 55.

35. *See, e.g.*, *Media in the Home 2000*, *supra* note 8, at 41 (reporting data on parental use of supervision techniques such as forbidding particular content, restricting time spent with the medium, and talking about content with the child).

36. Ann D. Walsh et al., *Mothers' Preferences for Regulating Children's Television*, 27 J. Advertising 23 (1998). Other researchers characterize three dimensions of parental guidance: restrictive, evaluative, and unfocused. Kelly L. Schmitt, *Public Policy, Family Rules and Children's Media Use in the Home* 25 (Annenberg Pub. Policy Ctr. U. Pennsylvania 2000) (citing Carl Bybee et al., *Determinants of Parental Guidance of Children's Television for a Special Subgroup: Mass Media Scholars*, 26 J. Broadcasting 697 (1982)) [hereinafter *Family Rules and Children's Media Use in the Home*]. Restrictive guidance includes limiting viewing hours, forbidding children from watching certain programs while specifying acceptable programs, changing the channel upon seeing objectionable content, or having prerequisites for viewing. Evaluative guidance occurs when parents explain the meaning of program content, discuss characters' motivations, or note the characters' good and bad acts. Lastly, parents provide unfocused guidance by watching with their children, encouraging certain programs, or talking about a particular show.

37. *Media in the Home 2000*, *supra* note 8, at 41.

38. *Id.* at 41.

39. *1999 Roper Youth Report*, *supra* note 6, at 47. Parents had more rules for younger versus older youth regarding television shows viewed (56% vs. 23%), movies watched on the VCR (44% vs. 25%), music listened to (29% vs. 23%), and time spent playing video games (26% vs. 12%).

40. *Media in the Home 2000*, *supra* note 8, at 41; *see also 1999 Roper Youth Report*, *supra* note 6, at 47.

41. Peter G. Christenson, *The Impact of Video Game Ratings: Is There a Boomerang Effect?* (1997) (unpublished manuscript, presented at the International Communication Association Conference) (on file with the Commission) [hereinafter *The Impact of Video Game Ratings*].

42. *1999 Roper Youth Report*, *supra* note 6, at 181.

43. *It's Not Only Rock and Roll*, *supra* note 19, at 9.

44. *Media in the Home 2000*, *supra* note 8, at 17-18. These findings are consistent with the *Survey of Parents and Children Regarding Self-Regulated Product Rating Systems* conducted by the Commission: 45% of children who play electronic games reported that their parents restricted the video games the child may play. *See* Appendix F (*Mystery Shopper Survey and Parent-Child Survey*).

45. *1999 Roper Youth Report*, *supra* note 6, at 181 (CDs 72% vs. 27%; video games 52% vs. 23%; movie rentals 54% vs. 16%, respectively, for older and younger children, were usually allowed to make these purchases without consulting their parents).

46. *Kids & Media @ the New Millennium*, *supra* note 8, at 64.

47. *Wise Up to Teens*, *supra* note 1, at 275.

48. *Kids & Media @ the New Millennium*, *supra* note 8, at 64.

49. *Wise Up to Teens*, *supra* note 1, at 275.

50. *Kids & Media @ the New Millennium*, *supra* note 8, at 64.

51. *Wise Up to Teens*, *supra* note 1, at 275.

52. *Kids & Media @ the New Millennium*, *supra* note 8, at 13. More recent statistics show that these percentages are increasing. According to the most recent Annenberg survey, 77% of children ages 8-16 have a stereo or CD player in their rooms, 39% a video game player, 30% a VCR, 20% a computer, and 11% online access. *Media in the Home 2000*, *supra* note 8, at 17.

53. *See, e.g.*, George P. Moschis & Roy L. Moore, *Decision Making Among the Young: A Socialization Perspective*, 6 J. Consumer Res. 101 (1979); Oswald A. J. Mascarenhas & Mary A. Higby, *Peer, Parent, and Media Influences in Teen Apparel Shopping*, 21 J. Acad. Marketing Sci. 53 (1993).

54. *See, e.g.*, B. Bradford Brown et al., *Perceptions of Peer Pressure Conformity, Dispositions and Self-Reported Behaviors Among Adolescents*, 22 Developmental Psychol. 521 (1986).

55. *1999 Roper Youth Report*, *supra* note 6, at 54.

56. *Id.* at 54.

57. *See, e.g.*, Judith S. Brook, et al., *Stages of Drug Use in Adolescence: Personality, Peer, and Family Correlates*, 19 Developmental Psychol. 269 (1983).

58. *Kids & Media @ the New Millennium*, *supra* note 8, at 64.

59. *See, e.g.*, George P. Moschis & Gilbert A. Churchill, *Consumer Socialization: A Theoretical and Empirical Analysis*, 15 J. Marketing Res. 599 (1978); Scott Ward, *Consumer Socialization*, 1 J. Consumer Res. 1 (1974).

60. *1999 Roper Youth Report*, *supra* note 6, at 187.

61. *Id.* at 55-57, 190.

62. *Id.* at 57 (multiple response question).

63. *E.g.*, Mark Ritson & Richard Elliot, *The Social Uses of Advertising: An Ethnographic Study of Adolescent Advertising Audiences*, 26 J. Consumer Res. 260 (1999).

64. Deborah Roedder John, *Consumer Socialization of Children: A Retrospective Look at Twenty-five Years of Research*, 26 J. Consumer Res. 183 (1999).

65. Jura Koncius, *Targeting Tweens: Retailers Are Homing in on the Next Generation*, Wash. Post, March 23, 2000, at G1.

66. *Id.*

67. *Wise Up to Teens*, *supra* note 1, at 204.

68. *Id.* at 206.

69. For example, the publisher of *Sixteen* magazine said that the magazine's target audience 20 years ago was actually 16 years of age, but that now the magazine caters to 11- and 12-year-olds. *The Teen Factor*, *supra* note 10. *See also* Chris Reidy, *Toy Industry Tries to Reinvent Itself*, Boston Globe, Dec. 15, 1998, at C8, ("Today's computer-savvy children quickly tire of rag dolls and toy soldiers. . . . 'Kids are going on the computer in kindergarten,' said editor Chris Byrne of Playthings Marketplace, an industry newsletter. 'Kids are giving up traditional toys by 6 or 7.'").

70. *Wise Up to Teens*, *supra* note 1, at 206-07.

71. *Id.* at 90.

72. *Id.* at 292.

73. Yankelovich Clancy Shulman, *Getting Hip to Free-Spending Teens*, Adweek, June 15, 1992, at 70.

74. *See Wise Up to Teens*, *supra* note 1, at 296.

75. *See generally Kids & Media @ the New Millennium*, *supra* note 8, at 45-60; *Media in the Home 2000*, *supra* note 8, at 39; *Family Rules and Children's Media Use in the Home*, *supra* note 36, at 36-37 (2000).

76. *See Wise Up to Teens*, *supra* note 1, at 90-93.

77. *See* Primedia, Inc., 1998 10-K Report, at 5 (accessible through Primedia's Web site www.primedia.com).

78. *See Wise Up to Teens*, *supra* note 1, at 170.

79. Daniel Golden, *ZapMe Is Targeted over Student Data Collected on Web*, Wall Street J., Jan. 19, 2000, at B6; Nancy Willard, *Capturing the "Eyeballs" and "E-wallets" of Captive Kids in School: Dot.com Invades Dot.edu*, http://netizen.uoregon.edu/documents/eyeballs.html (visited July 18, 2000).

80. *See Report* Part V.B.5.

81. *Id.; see generally Wise Up to Teens, supra* note 1, at 91.

82. Wayne Friedman, *Street Marketing Hits the Internet*, Advertising Age, May 1, 2000, at 32.

83. *See, e.g.*, Michael Colton, *Welcome to My Hype-Industrial Complex, Baby!*, Brill's Content (Sept. 1999) (noting product placements), www.brillscontent.com/features/austin_0999.html (visited Sept. 1, 2000).

84. Denise E. DeLorme & Leonard N. Reid, *Moviegoers' Experiences and Interpretations of Brands in Films Revisited*, 28:2 J. Advertising 71 (Summer 1999).

85. Dade Hayes, *The Preshow Must Go on ... and on...*, Variety, Nov. 8, 1999, at 9.

86. Margaret Littman, *How Marketers Track Underage Consumers*, Marketing News, May 8, 2000, at 4.

87. The forbidden fruit thesis is based on psychological theories including reactance theory and commodity theory. Reactance theory suggests that when an individual's freedom to engage in a particular behavior is threatened or eliminated, the individual will experience an unpleasant motivational state that consists of pressures to re-establish the threatened or lost freedom. Commodity theory suggests that any commodity that is perceived as unavailable or that can only be obtained with effort will be more valued than a commodity that can be obtained freely. *See* Brad J. Bushman & Angela D. Stack, *Forbidden Fruit Versus Tainted Fruit: Effects of Warning Labels for an Attraction to Television Violence*, 2 J. Applied Experimental Psychol. 207 (1996).

88. *See* Peter G. Christenson, *The Effects of Parental Advisory Labels on Adolescent Music Preferences*," 42 J. Comm. 106 (1992) [hereinafter *The Effects of Parental Advisory Labels*].

89. John Morkes & Helen L. Chen et al., *Young Adolescents' Responses to Movie, Television, and Computer Game Ratings and Advisories* (May 1997) (unpublished paper presented at the International Communication Association Conference) (on file with the Commission) [hereinafter *Young Adolescents' Responses*].

90. *Id.* For other studies showing a forbidden fruit effect, *see, e.g.*, Joanne Cantor & Kristen Harrison, *Ratings and Advisories for Television Programming: University of Wisconsin, Madison Study*, *in* National Television Violence Study: Vol. I III-1, III-14 (1994) (not one boy age 10-14 opted to watch a movie he believed had been rated G over others rated PG, but 50% of boys age 10-14 presented with the same options elected to watch that movie when they believed it was rated PG-13 or R); *The Impact of Video Game Ratings, supra* note 41 (students in grades 4 through 12 selected video games assigned "13 and older" rating as more "fun" than games assigned a "suitable-for-all-ages" rating).

91. *The Effects of Parental Advisory Labels, supra* note 88.

92. *See, e.g.*, Bruce A. Austin, *The Influence of the MPAA's Film-Rating System on Motion Picture Attendance: A Pilot Study*, 106 J. Psychol. 91 (1980) (different MPAA ratings assigned

to films had no significant impact on high school students' desire to see the films); Joanne Cantor et al., ***Ratings and Advisories for Television Programming*, *in*** National Television Violence Study: Vol. II (1997) (the MPAA ratings were the only one of the eight rating systems tested that significantly affected older (age 10 to 15) children's desire to see the programs, with the results reflecting a forbidden fruit effect).

93. *The Effects of Parental Advisory Labels*, *supra* note 88; *Young Adolescents' Responses*, *supra* note 89.

Appendix C

FIRST AMENDMENT ISSUES IN PUBLIC DEBATE OVER GOVERNMENTAL REGULATION OF ENTERTAINMENT MEDIA PRODUCTS WITH VIOLENT CONTENT

This Appendix addresses First Amendment concerns that have been raised in the public debate regarding the marketing of entertainment media products with violent content to children.[1] It discusses the relevance of the First Amendment to the Commission's role in undertaking its study and issuing this Report, and to private sector restrictions on advertising and marketing. It also discusses the First Amendment standards and considerations that would most likely be used to evaluate proposals for government restrictions on the advertising and marketing of entertainment media products with violent content.

I. BACKGROUND

The First Amendment to the United States Constitution limits the government from making any law or regulation that would ban or indirectly tend to suppress – that is, "chill" – speech or expression.[2] Historically, the First Amendment has been interpreted broadly to protect individuals from government attempts to suppress political, ideological, or scientific ideas or information, and to defend against government incursions on freedom of expression in art, literature, movies, and music.[3] By contrast, the First Amendment has been interpreted to provide more narrow protection for commercial expression such as advertising.[4] The Supreme Court also has placed outside the protections of the First Amendment certain limited classes of speech that are viewed as having little or no value at all because they do not promote democratic ideals: incitement,[5] fighting words,[6] and obscenity.[7]

II. THE FTC'S STUDY, THE FIRST AMENDMENT, AND SELF-REGULATION

In general, the First Amendment applies only to government's attempts to restrict speech and expression through legislation, regulation, and enforcement actions. Such restriction includes the passage of legislation by the United States Congress or state or local legislatures and the promulgation of implementing regulations by federal agencies such as the Federal Trade Commission and their state and local counterparts. It does not generally apply to a study or investigation by a governmental agency or commission "in the absence of some actual or threatened imposition of government power or sanction."[8] The FTC's objective in undertaking this Report was to study whether the entertainment industries are marketing media products with violent content to children, and to analyze the industries' advertising and promotional activities in light of the existing self-regulatory systems. Its objective was not to recommend legislation or any government action.

Nor does the First Amendment generally apply to private activity such as industry self-regulation. The exception is when a private party's actions are attributable to the government, either when: (i) the private party exercises a public function that is traditionally exclusively reserved to the State,[9] or (ii) the government has exercised coercive power or provided such significant encouragement that the challenged action can fairly be attributed to the government.[10] Therefore, the Constitution would not preclude the entertainment media industries themselves from taking steps to restrict or limit advertising and marketing of media products with violent content to children, as such conduct is private activity beyond the reach of the First Amendment.

III. THE COMMERCIAL/NON-COMMERCIAL SPEECH DISTINCTION

A. General Principles

The First Amendment's protection of speech and expression is broad but not absolute.[11] In certain cases, the courts have upheld restrictions on speech when the government's justification for restricting the speech outweighs the First Amendment values at issue.[12] In analyzing governmental restrictions on speech, the Supreme Court traditionally has divided speech into two categories – commercial speech and "fully protected," non-commercial speech.[13] Although the Supreme Court has struggled to define the differences between these two categories, there are some clear general rules. Non-commercial speech is generally viewed as political, ideological, artistic, or scientific expression. Commercial speech has been defined broadly as speech "related solely to the economic interests of the speaker and its audience,"[14] and described more narrowly as speech that does "no more than propose a commercial transaction."[15]

Whether speech is categorized as commercial or non-commercial is critical because the degree of First Amendment protection varies depending on the category of speech. Traditionally, the Supreme Court has applied a "strict scrutiny" standard to non-commercial speech, while analyzing commercial speech under an "intermediate scrutiny" test.[16] In practice, to restrict non-commercial speech, the government must prove that the restriction promotes a compelling government interest and is narrowly tailored to promote that interest.[17] If a less restrictive alternative would serve the government's purpose, the government must use that alternative.[18] By contrast, to restrict commercial speech that concerns lawful activity and is not misleading, the government must prove that its interest is substantial, that the regulation directly advances the governmental interest asserted, and that it is not more extensive than is necessary to serve that interest.[19]

B. Advertisements and Promotions for Entertainment Media Products

The Supreme Court generally has viewed advertising for particular specified commercial products or professional services as commercial speech. Under this approach, it has upheld limitations on speech such as restrictions on targeted direct mail solicitations by lawyers to families of accident or disaster victims[20] and bans on solicitations by commercial enterprises on public university premises.[21] The categorization of advertising for entertainment media products as commercial or non-commercial speech is not as settled. Although some observers argue that advertisements for movies, music recordings, and electronic games should be viewed as commercial speech because they are merely advertising products that have been placed in the stream of commerce for profit,[22] industry members and some First Amendment advocates assert that such advertisements should be analyzed as protected, non-commercial speech because: (i) they promote a product that itself is entitled to protection; and (ii) they often incorporate or summarize parts of the underlying non-commercial expression, and therefore are, in substance, nothing more than a particular subset of the content of the non-commercial expression.[23]

The Supreme Court has never specifically ruled on this issue, and the existing federal and state court opinions are not uniform.[24] At least one state court has held that an advertisement for a movie "goes beyond proposal of a commercial transaction and encompasses the ideas expressed in the motion picture which it promotes; thus it is afforded the same First Amendment protections as the motion picture . . . ."[25] State courts in New York and California have reached opposite conclusions regarding whether promotional statements on a book cover and flyleaf constitute commercial or non-commercial speech.[26] Given that the law in this area is still developing, this Appendix will set forth the applicable standards both for commercial and non-commercial speech and review current proposals under both paradigms.

IV. THE STANDARD FOR REGULATION OF COMMERCIAL SPEECH

Since 1980, the courts have analyzed regulations affecting advertising for commercial products or professional services under the four-part test set forth for assessing commercial speech restrictions by the Supreme Court in *Central Hudson Gas & Electric Corp. v. Public Service Commission of New York.*[27] The *Central Hudson* test asks:

(1) whether the speech at issue concerns lawful activity and is not misleading;

(2) whether the asserted government interest is substantial; and, if so,
(3) whether the regulation directly advances the governmental interest asserted; and
(4) whether it is not more extensive than is necessary to serve that interest.[28]

In this analysis, the government bears the burden of identifying a substantial interest and justifying the challenged restriction: "The government is not required to employ the least restrictive means conceivable, but it must demonstrate narrow tailoring of the challenged regulation to the asserted interest – a fit that is not necessarily perfect but reasonable; that represents not necessarily the single best disposition but one whose scope is in proportion to the interest served."[29] Moreover, "the four parts of the *Central Hudson* test are not entirely discrete. All are important and, to a certain extent, interrelated: Each raises a relevant question that may not be dispositive to the First Amendment inquiry, but the answer to which may inform a judgment concerning the other three."[30]

V. STANDARDS FOR REGULATION OF NON-COMMERCIAL SPEECH

Non-commercial speech receives the highest degree of constitutional protection. But, the government may still regulate certain aspects of that speech provided it meets certain requirements. In evaluating non-commercial speech, the courts distinguish between content-based restrictions and content-neutral restrictions. As with the distinction between commercial and non-commercial speech, "[d]eciding whether a particular regulation is content-based or content-neutral is not always a simple task."[31]

A. Content-Neutral Restrictions

Content-neutral restrictions regulate speech without regard to its subject matter or the viewpoint conveyed.[32] The Supreme Court has held that the "government may impose reasonable restrictions on the time, place, or manner of protected speech, provided the restrictions 'are justified without reference to the content of the regulated speech, that they are narrowly tailored to serve a significant government interest, and that they leave open ample alternative channels for communication of the information.'"[33] Such content-neutral regulations may be permissible even when they incidentally affect the content of speech to some degree because, in most cases, such regulations "pose a less substantial risk of excising certain ideas or viewpoints from the public dialogue."[34] Examples of content-neutral restrictions that have been held to be constitutional include laws that restrict the distribution of printed materials to prevent litter in a public space[35] or laws that prohibit the use of loudspeakers in order to reduce noise.[36]

Facially neutral regulations, however, can be invalid if they have a disproportionate effect on a particular type of speech or expression.[37]

B. Content-Based Restrictions

Content-based regulations regulate speech based on its subject matter or viewpoint. They seek to "suppress, disadvantage, or impose differential burdens upon speech because of its content."[38] Such regulations are subject to the strictest constitutional scrutiny, meaning that the government must prove that: (i) the regulation serves a compelling governmental interest; (ii) the means chosen to achieve that interest are narrowly tailored; and (iii) it has chosen the "least restrictive means" of accomplishing the government's objective.[39] The operative distinctions between a court's review of a content-based regulation and a content-neutral regulation is that in the former case, the government must meet the "compelling interest" and "least restrictive means" standards, while in the latter situation the government need only prove a "significant interest" and the availability of "ample alternative channels for communication of the information."

Constitutional scholars generally agree that governmental regulation of media products with violent content, "whether in the form of banning, rating, or channeling of violent media content, necessarily requires the government to make a judgment as to what content lies within the ambit of the statute and what content does not," thereby triggering content-based strict scrutiny review.[40] Although content-based regulations are considered presumptively invalid, such a regulation may withstand First Amendment analysis if: (i) it falls within certain categories in which the Supreme Court has permitted a more liberal standard of review, as described below, or (ii) the government is able to establish that the regulation meets the strict scrutiny test.

1. Exceptions to strict scrutiny for content-based restrictions on non-commercial speech relevant to entertainment media context

a. Obscenity

The Supreme Court has carved out an exception to the First Amendment for obscenity of a sexual nature, holding that it is simply "not within the area of constitutionally protected speech or press."[41] In *Miller v. California*,[42] the Court held that speech is obscene and subject to full regulation when: "(a) 'the average person, applying contemporary community standards' would find that the work, taken as a whole, appeals to the prurient interest; (b) whether the work depicts or describes, in a patently offensive way, sexual conduct specifically defined by the applicable state law; and (c) the work, taken as a whole, lacks serious literary, artistic, political, or scientific value."[43] Under the *Miller* test, many courts have upheld state restrictions on obscene materials.[44]

b. Protection of minors

The Supreme Court has long recognized that the "well-being of its children is of course a subject within the State's constitutional power to regulate" and upheld content-based restrictions on speech – including complete bans on children's access to certain material – that would not survive constitutional scrutiny if applied to adults.[45] These content-based restrictions are primarily aimed at constitutionally protected "indecent" material.[46] In such cases, the courts have not required the government to demonstrate to a scientific certainty that the speech at issue causes harm to minors.[47]

Nonetheless, the government's interest in protecting children does not always outweigh the First Amendment considerations involved. The Supreme Court has struck down a regulation requiring cable operators either to scramble sexually explicit channels in full or to limit programming on such channels to certain hours, as well as a statute criminalizing the knowing transmission of obscene or indecent messages to minors over the Internet, on "overbreadth" grounds because they infringed on adults' First Amendment rights.[48] The Supreme Court has repeatedly emphasized that regardless of the government's interest in protecting children, it may not "reduce the adult population . . . to . . . only what is fit for children."[49] "'Regardless of the government's interest' in protecting children, 'the level of discourse reaching a mailbox cannot be limited simply to that which would be suitable for a sandbox.'"[50]

c. Television and radio broadcasting

To a large degree, the higher level of governmental regulation that the Supreme Court has permitted in the area of broadcast television and radio corresponds to that permitted for obscenity and the protection of minors.[51] The Supreme Court has declined to apply the strict scrutiny test to content-based regulations of these broadcast media for three reasons: (i) the "scarcity" of airwaves available to the broadcast media;[52] (ii) the "uniquely pervasive" presence of the broadcast media in the lives of all Americans coupled with an individual's right to be left alone in the privacy of the home;[53] and (iii) the fact that broadcasting is easily accessible to even very young children.[54] Essentially, the Court has been concerned that a child could simply turn on the television and, without more, be subjected to indecent material. Under this rationale, the Court has upheld certain content-based restrictions on broadcasting.[55] To date, however, the Supreme Court has not addressed the constitutionality of content-based restrictions on *violent* content in broadcast television or radio.

VI. REGULATORY PROPOSALS AND FIRST AMENDMENT ANALYSIS

This section explores First Amendment issues likely to arise if laws were enacted to restrict the advertising and marketing of entertainment media products with violent content to children. As noted earlier,[56] this area of First Amendment law is still unsettled.

A. Mandatory Rating or Labeling Systems

Some advocates have proposed a government-imposed parental advisory system – either a separate rating or labeling system for each industry or one uniform system for all or most of the entertainment industries.[57] Most commentators agree that any law requiring the rating or labeling of entertainment media products would raise the issue of "compelled speech" (because such a law or regulation would require a private party to express or endorse a particular message), thereby subjecting such a system to First Amendment review.[58]

The First Amendment analysis of such a law would turn on whether the court viewed government-imposed mandatory ratings or labels as affecting non-commercial or commercial speech. If viewed as affecting non-commercial speech, the court would first determine whether the labeling scheme is content-based or content-neutral. Although there has been some debate on this issue, many First Amendment scholars have argued that, were the government to mandate that media producers identify or label particular programs on the basis of the violence that they contain, courts would view the regulation as content-based, and therefore subject to the highest form of strict scrutiny and not as a consumer education label subject to a more lenient standard of review.[59] If viewed as affecting only commercial speech, the court would apply the *Central Hudson* test set forth above. Thus, the constitutionality of the law or regulation would depend in large part on whether the government could establish a: (i) "compelling" (non-commercial speech) or "substantial" (commercial speech) interest in providing children and their parents with information necessary to make judgments about the appropriateness of particular entertainment products with violent content; (ii) whether the government could establish that such a rating/warning system either is "narrowly tailored" to achieve (non-commercial speech) or "directly advances" (commercial speech) that objective; and (iii) whether such a ratings/warning system is either the "least restrictive means" of accomplishing (non-commercial speech) or a "reasonable fit" with (commercial speech) the government's objectives given that such a system might impinge on the creativity of media producers and artists.[60]

B. Restrictions on Advertising and Marketing Targeting and Placement

Some advocates have proposed regulating advertising for entertainment media products with violent content to children by limiting advertisements and promotions for these products to certain types of media or venues that are not likely to have a large number of children in the audience.[61] Such regulations might include restrictions limiting advertisements for R-rated films, M-rated electronic games, or explicit-content labeled recordings to television or radio programs with a high percentage of over-16 audience members and prohibitions against advertising these media products in school-based media or on school property, such as cafeteria bulletin boards and athletic scoreboards.

Again, the level of First Amendment scrutiny that would likely apply to government-imposed restrictions of this type would turn on whether the advertisements for these products are classified as commercial speech or non-commercial speech. If classified as commercial speech, the court would apply the four-part *Central Hudson* test. If viewed as non-commercial speech, the court would first determine whether the restriction is content-based or content-neutral and then apply the applicable constitutional tests. In this context, because the restriction is premised on protecting minors from advertising for violent content and not on merely providing consumers with information, it is likely to be viewed as content-based.

A court's approach to such restrictions would depend in large part on three issues relevant to judicial analysis in non-commercial and commercial speech cases: (i) whether the government could, on the basis of the scientific, psychological, and empirical research establish a "compelling" (non-commercial speech) or "substantial" (commercial speech) "reason to protect minors from advertisements for entertainment products with violent content by restricting advertisements for such products to media and venues without substantial numbers of children; (ii) whether the regulation is "narrowly tailored" to achieve (non-commercial speech) or "directly advances" (commercial speech) that interest; and (iii) whether the government could establish that such restrictions are either the "least restrictive means" of accomplishing (non-commercial speech) or a "reasonable fit" with (commercial speech) the government's objectives given that such restrictions might inevitably affect adults as well as children. Under either standard, a court would also need to consider whether the challenged regulation would meet the constitutional standards for vagueness (*i.e.*, whether the regulatory definition of what constitutes violence is sufficiently precise "so that those who are governed by the law and those that administer it will understand its meaning and application"[62]) or overbroad (*i.e.*, whether it would affect adults as well as children and whether it would also affect socially valuable and educational media that contain violence).[63]

C. Regulation of Violent Content in Advertising for Movies, Music, and Electronic Games

Regulations aimed at limiting violent content in the advertising of media products would be subject to largely the same First Amendment analysis described above. Accordingly, if advertisements for media products were considered non-commercial speech, any regulation affecting the content of these advertisements clearly would be content-based and subject to strict scrutiny. Given the courts' general aversion to content-based restrictions, the government's burden of proof to establish the constitutionality of such restrictions would be quite high.

Some commentators have approached the issue of violent content by calling for courts to treat violence like obscenity – essentially taking it out of the realm of constitutionally protected speech, and thereby permitting increased regulation.[64] They assert that depictions of violence that go beyond acceptable limits, like obscenity, can be differentiated from depictions of violence that have artistic or literary merit.[65] To date, however, those courts that have considered the issue have held that violent speech or expression cannot be treated like obscenity unless the work also contains material that is (sexually) obscene.[66] Many of those courts – and First Amendment scholars – note that it would be difficult to create a workable definition of violence that would not be overbroad or vague.[67] They argue that definitions that attempt to define violence by describing it either in terms of the *Miller* test or in terms of specific violent crimes (*e.g.*, murder, rape, aggravated assault, mayhem, and torture) would be overbroad because they would apply to large categories of valuable speech protected by the First Amendment or they would be too vague to give sufficient notice to product developers as to what would be considered obscene violence.[68] Should federal or state legislatures adopt laws treating violence like obscenity, it may fall to the courts to interpret precisely what constitutes violence that is equivalent to obscenity.[69]

ENDNOTES

1. Trade associations representing members of the movie and music industries submitted "white papers" to the Commission arguing vigorously that advertisements for movies and music are entitled to full First Amendment protection. *See* Memorandum from the Recording Industry Association of America ("RIAA"), BMG, EMI, Sony Music, Universal, and Warner Music Group to Federal Trade Commission, ***First Amendment Issues Relevant to Federal Trade Commission Study on Marketing Practices of Recording Industry*** (Feb. 14, 2000) [hereinafter ***Recording Industry Memorandum***]; Walter E. Dellinger & Charles Fried, A Paper Presented to the Federal Trade Commission on behalf of Sony Pictures Entertainment Inc., Metro-Goldwyn-Mayer Studios, Inc., Miramax Films, Paramount Pictures Corporation, Twentieth Century Fox Film Corporation, Universal City Studios, Inc., Warner Bros., and Walt Disney Pictures and Television, ***First Amendment Implications of the Federal Trade Commission's Inquiry into the Marketing to Minors of Motion Pictures That Depict Violence*** (Jan. 19, 2000) [hereinafter ***Motion Pictures Industry Paper***].

2. U.S. Const. amend. I.

3. The Supreme Court has expressly stated that movies and music fall within the First Amendment. *See, e.g.*, ***Schad v. Borough of Mt. Ephraim***, 452 U.S. 61, 65 (1981) (declaring, in case striking down municipal ordinance prohibiting nude dancing, that "[e]ntertainment, as well as political and ideological speech, is protected; motion pictures, programs broadcast by radio and television, and live entertainment, such as musical and dramatic works fall within the First Amendment guarantee."). Several federal courts have debated whether electronic games should receive the same First Amendment protections as the other entertainment media but have not yet decided the issue conclusively. ***Compare Rothner v. City of Chicago***, 929 F.2d 297 (7th Cir. 1991) (indicating that First Amendment protection of electronic games may depend on creative content), ***with Malden Amusement Co. v. City of Malden***, 582 F. Supp. 297 (D. Mass. 1983) (holding that video games are not entitled to First Amendment protection because they do not contain expressive or informational content), ***and America's Best Family Showplace Corp. v. City of New York***, 536 F. Supp. 170 (E.D.N.Y. 1982) (same). In deciding an appeal of a motion to dismiss, the Seventh Circuit in ***Rothner*** developed an approach that considers the extent to which the electronic game at issue contains artistic content:

> On the basis of the complaint alone, we cannot tell whether the video games at issue here are simply modern day pinball machines or whether they are more sophisticated presentations involving storyline and plot that convey to the user a significant artistic message protected by the first amendment. Nor is it clear whether these games may be considered works of art. To hold on this record that all video games – no matter what their content – are completely devoid of artistic value would require us to make an assumption entirely unsupported by the record and perhaps totally at odds with reality. As the Supreme Court has confessed its inability to comprehend fully the technology of the cablevision industry on the basis of a complaint, so we must confess an inability to comprehend fully the video game of the 1990s.

Rothner, 929 F.2d at 303. Given the substantial innovations in the current generation of electronic games, including their use of movie clips, music, animation, and the development of plot and character, however, some commentators predict that many courts will eventually accord the same protection to electronic games as to other types of entertainment media. *See* David B. Goroff, *The First Amendment Side Effects of Curing Pac-Man Fever*, 84 Colum. L. Rev. 744, 752–53, 764 (1984); Matthew Hamilton, *Graphic Violence in Computer and Video Games: Is Legislation the Answer?* 100 Dick. L. Rev. 181, 190 (1995).

4. *See, e.g., Ohralik v. Ohio State Bar Ass'n*, 436 U.S. 447, 456 (1978) (Constitution affords "commercial speech a limited measure of protection, commensurate with its subordinate position in the scale of First Amendment values . . . .").

5. *See Brandenburg v. Ohio*, 395 U.S. 444 (1969). The *Brandenburg* Court's "incitement" decision requires proof of incitement to *imminent* and *immediate* lawless action. *Id.* at 447. In a law review article discussing proposals to regulate violence on television, Judge Harry Edwards of the United States Court of Appeals for the District of Columbia Circuit explained that the incitement element would be difficult for the government to prove:

> It is apparent that the incitement element of the *Brandenburg* test, alone, fails to capture government regulation of television violence. Simply put, the violent fare on television does not explicitly urge viewers to commit the evils with which the legislature may be concerned. Nor can such intent reasonably be attributed to television executives and producers. Largely for this reason, courts and commentators have concluded with near unanimity that televised portrayals of violence are not "directed to inciting or producing imminent lawless action."

Harry T. Edwards & Mitchell N. Berman, *Regulating Violence on Television*, 89 Nw. U. L. Rev. 1487, 1526 (1995); *cf. Estate of Jessica James v. Meow Media, Inc.*, 90 F. Supp. 2d 798 (W.D. Ky. 2000) (granting defendant's motion to dismiss tort claims because plaintiff failed to prove that defendant's actions, creation and distribution of a movie, games, and Internet materials, caused death of plaintiff's daughter). Judge Edwards suggested, however, that if television producers aired material intended to incite or produce violent behavior, the "mere fact of its being telecast would not immunize the programming from regulation under *Brandenburg*." Edwards & Berman, *supra*, at 1526 n.186.

6. *See Chaplinsky v. New Hampshire*, 315 U.S. 568 (1942). *Chaplinsky's* "fighting words" doctrine has been used only rarely, and has been limited to personally directed insults or taunts that tend to provoke immediate violent reaction. *See Gooding v. Wilson*, 405 U.S. 518, 524 (1972) (limiting "fighting words" doctrine); *Cohen v. California*, 403 U.S. 15, 20 (1971) (same); Dawn Christine Egan, *"Fighting Words" Doctrine: Are Police Officers Held to a Higher Standard, or per Bailey v. State, Do We Expect No More from our Law Enforcement Officers than We Do from the Average Arkansan?*, 52 Ark. L. Rev. 591, 591–92 (1998) (noting that the Supreme Court has not upheld a conviction based on the "fighting words" doctrine since *Chaplinsky*). Because movies, music recordings, and electronic games are not explicitly directed at an individual person, most observers agree that the *Chaplinsky* doctrine is not relevant to the current public debate over violent entertainment media. *See* E. Barret Prettyman, Jr. & Lisa A. Hook, 38 Fed. Comm. L.J. 317, 372 n.228 (1987); *but see* Sanjiv N. Singh, *Cyberspace: A New*

Frontier for Fighting Words, 25 Rutgers Computer & Tech. L.J. 283 (1999) (arguing that the "fighting words" doctrine could find a new life in cyberspace).

7. *See Miller v. California*, 413 U.S. 15 (1973); *infra* Part V.B.1.a. for a discussion of the *Miller* test for obscenity.

8. *Penthouse Int'l Ltd. v. Meese*, 939 F.2d 1011, 1017 (D.C. Cir. 1991), *cert. denied*, 503 U.S. 950 (1992). In *Penthouse*, the U.S. Attorney General established a commission to study the impact of pornography in the United States. The commission was instructed to make recommendations to the Attorney General concerning ways in which the spread of pornography could be contained. After holding several public hearings, the commission sent letters to 23 corporations including Penthouse, stating, among other things, that the commission had received testimony indicating "that your company is involved in the sale or distribution of pornography." *Id.* at 1013. The recipients of the letters were advised to inform the commission if they disagreed, and were further advised that failure to respond would be taken as an indication of no objection to the testimony. *Id.*

Penthouse sued for injunctive and declaratory relief, arguing that the commission was chilling the distribution of constitutionally protected speech. *Id.* at 1012. The court rejected Penthouse's argument and held that its First Amendment rights were not chilled because of the lack of government threat. The court noted that the commission had no tie to prosecutorial power nor authority to censor publications. *Id.* at 1015. The court noted that the letter to the 23 corporations did not threaten prosecution or intimate any intent to proscribe the distribution of the publications, and stated that it did not "believe that the Commission ever threatened to use the coercive power of the state against recipients of the letter." *Id. Compare with Bantam Books v. Sullivan*, 372 U.S. 58 (1963) (activities of Rhode Island Commission to Encourage Morality in Youth violated First Amendment's prohibition against "informal censorship" because Commission had power to investigate and recommend prosecution of booksellers who sold material that Commission determined was obscene or indecent).

9. This is known in constitutional law as the "public function" prong of the "state action" doctrine. *See Jackson v. Metropolitan Edison Co.*, 419 U.S. 345 (1980).

10. This is known in constitutional law as the "nexus" prong of the "state action" doctrine. *See Rendell-Baker v. Kohn*, 457 U.S. 830 (1982); *Lugar v. Edmonson Oil Co.*, 457 U.S. 922 (1982); *Blum v. Yaretsky*, 457 U.S. 991 (1982); *cf.* Catherine J. Ross, *Anything Goes: Examining the State's Interest in Protecting Children from Controversial Speech*, 53 Vand. L. Rev. 427, 491–93 (2000) (noting that parental concern over objectionable media products has led some national retail stores to refuse to stock such products or to require an edited version).

11. As Judge Harry T. Edwards of the D.C. Circuit has explained:

> The age when courts and commentators could debate whether the First Amendment constituted an "absolute" barrier to government regulation of speech is long gone. In its place stands a complex set of rules that directs a reviewing court to consider such diverse factors as the form and effect of the regulation, the purposes of the regulators, the value of the speech regulated, and the type of

media involved.

Edwards & Mitchell, *supra*, 1490–91 (citation omitted).

12. *See Nixon v. Shrink Miss. Gov't PAC*, 120 S. Ct. 897, 906 (2000) (upholding contribution limits on state office seekers based on the state's interest in preventing corruption and the appearance of corruption in the political process).

13. *See generally* P. Cameron DeVore, *Advertising and Commercial Speech*, 582 Practising L. Inst. 715 (Nov. 1999).

14. *Central Hudson Gas & Elec. Corp. v. Public Service Comm'n of New York*, 447 U.S. 557, 561 (1980).

15. *Virginia State Bd. of Pharmacy v. Virginia Citizens Consumer Council, Inc.*, 425 U.S. 748, 762 (1976) (quoting *Pittsburgh Press Co. v. Human Relations Comm'n*, 413 U.S. 376, 385 (1973)).

16. *See Reno v. ACLU*, 117 S. Ct. 2329 (1997); *Central Hudson*, 447 U.S. 557.

17. *See United States v. Playboy Entertainment Group, Inc.*, No. 98-1682, 2000 WL 646196, at *7 (U.S. May 22, 2000).

18. *Id.*

19. *See supra* Part IV. The exact degree of protection accorded to commercial speech is in flux. Although the Supreme Court has adhered to the "intermediate scrutiny" standard, recently, several Justices have suggested that the distinction between the two types of speech should be narrowed, and that "truthful, noncoercive" commercial speech about lawful activities should receive the same degree of constitutional protection, *i.e.*, strict scrutiny, as non-commercial speech. *See 44 Liquormart, Inc. v. Rhode Island*, 517 U.S. 484 (1996). In *44 Liquormart*, at least four Justices suggested that truthful, non-misleading commercial speech should receive the same First Amendment protection as non-commercial speech, *id.* at 500, 504 (Stevens, Kennedy, Souter, & Ginsburg, JJ., plurality opinion), while Justice Thomas advocated for the elimination of the distinction between commercial and non-commercial speech. *Id.* at 522 (Thomas, J., concurring in part, and concurring in the judgment). Although the Supreme Court has not yet taken the step of elevating commercial speech to the same status as non-commercial speech, many judges and academics have already begun to discuss the implications of such a doctrinal shift. *See* Martin H. Redish, *First Amendment Theory and the Demise of the Commercial Speech Distinction: The Case of the Smoking Controversy*, 24 N. Ky. L. Rev. 553 (1997). The Supreme Court has emphasized, however, that even if truthful commercial speech is accorded a higher level of constitutional protection, false and deceptive commercial speech would remain subject to full regulation by the government. *See Ibanez v. Florida Dep't of Bus. & Prof'l Regulation*, 512 U.S. 136, 142 (1994); *see also* 15 U.S.C. §§ 45(a)(1), 45(n) (authorizing FTC to regulate misleading and deceptive speech and to proscribe "unfair" advertising and marketing – *i.e.*, an act or practice that "causes or is likely to cause substantial injury to consumers that is not reasonably avoidable by consumers themselves and not outweighed by countervailing benefits to

consumers or to competition.")

20. *Florida Bar v. Went For It, Inc.*, 515 U.S. 618, 635 (1995).

21. *See Board of Trustees of SUNY v. Fox*, 492 U.S. 469 (1989).

22. *Cf.* Robert Adler, *Here's Smoking at You Kid: Has Tobacco Product Placement in the Movies Really Stopped?*, 60 Mont. L. Rev. 243, 275 (1999).

23. Specifically, the *Recording Industry Memorandum* states that "[A]dvertisting and marketing materials for recordings virtually always incorporate CD titles that are themselves expressive, and may also incorporate song titles and selected lyrics as well. These materials also frequently reproduce or incorporate album (or now, CD) covers that, themselves, are clearly art – another form of protected expression." *Recording Industry Memorandum* at 36; *cf. Rogers v. Grimaldi*, 875 F.2d 994, 998 (2d Cir. 1989) (movie title deserves First Amendment protection so long as the title does not mislead as to authorship and content of movie).

24. Those who argue in favor of full constitutional protection for advertising and marketing activities for entertainment media products rely on the Supreme Court's dicta in a case involving advertising for contraceptives, which suggested that strict scrutiny "may be appropriate in a case where [a company] advertises an activity itself protected by the First Amendment." *Bolger v. Youngs Drug Product*, 463 U.S. 60, 67 n.14 (1983).

25. *See Lewis v. Columbia Pictures Indus., Inc.*, 23 Media L. Rep. 1052 (Cal. Ct. App. 4th Dist. Nov. 8, 1994); *see also Lane v. Random House, Inc.*, 985 F. Supp. 141, 152 (D.D.C. 1995).

26. *Compare Lacoff v. Buena Vista Publ'g, Inc.*, No. 20-091, 606005/98, 2000 WL 202625, at *6 (N.Y. Sup. Ct. Jan. 28, 2000) (book cover and flyleaf for *Beardstown Ladies' Common-Sense Investment Guide* is not "advertising material" evaluated under commercial speech doctrine, but non-commercial speech fully protected by First Amendment), *with Keimer v. Buena Vista Books, Inc.*, 89 Cal. Rptr. 2d 781 (Ct. App. 1st Dist. 1999) (book cover and flyleaf containing allegedly false statements about investment returns constituted commercial speech entitled only to "qualified" free speech protection).

27. 447 U.S. 557.

28. *Id.* at 566.

29. *Greater New Orleans Broad. Ass'n v. United States*, 119 S. Ct. 1923, 1932 (1999) (internal quotation marks omitted).

30. *Id.* at 1930*; see also 44 Liquormart*, 517 U.S. 484, 499–500.

31. *Turner Broad. Sys. v. FCC*, 512 U.S. 622, 642 (1994). A content-based restriction, for example, would be a restriction that prohibited the publication of all political advertisements. A viewpoint-based restriction, which is a subset of a content-based restriction, would be a restriction that prohibited the publication of a political advertisement advocating a certain political party or idea. By contrast, an example of a content-neutral restriction would be a

restriction that prohibited any advertising inside federal offices.

32. *Ladue v. Gilleo*, 512 U.S. 43, 54–59 (1994) (distinguishing between content-based and content-neutral regulations).

33. *Ward v. Rock Against Racism*, 491 U.S. 781, 791 (1989) (quoting *Clark v. Community for Creative Non-Violence*, 468 U.S. 288, 293 (1984)).

34. *Turner*, 512 U.S. at 642.

35. *See City Council of Los Angeles v. Taxpayers for Vincent*, 466 U.S. 789, 804–05 (1984) (finding that "[t]he text of the ordinance [prohibiting the posting of signs on public property] is neutral – indeed it is silent – concerning any speaker's point of view. . . . It is well settled that the state may legitimately exercise its police powers to advance esthetic values.").

36. *Ward*, 491 U.S. 781.

37. *Turner*, 512 U.S. at 645.

38. *Id.* at 642.

39. *See Arkansas Writers' Project, Inc. v. Ragland*, 481 U.S. 221, 231 (1987).

40. *See United States v. Playboy Entertainment Group, Inc.*, No. 98-1682, 2000 WL 646196; *see also* The [New York Bar Association] Committee on Comm. and Media L., *Violence in the Media: A Position Paper*, 52 The Record 310 (Apr. 1997).

41. *Miller*, 413 U.S. at 23.

42. *Id.*

43. *Id.* at 24.

44. *See Recreational Developments of Phoenix, Inc. v. City of Phoenix*, 83 F. Supp. 2d 1072, 1095 (D. Ariz. 1999) (denying plaintiff's motion to enjoin an obscenity ordinance because the state law mirrored the *Miller* test); *County of Kenosha v. C&S Management, Inc.*, 223 Wis. 2d 373 (1999) (upholding the constitutionality of a Wisconsin law prohibiting the sale of obscene material based on the *Miller* test).

45. *Ginsberg v. New York*, 390 U.S. 629, 639 (1968).

46. *Id.* (upholding statute prohibiting sale of obscene – as to minors – printed material to minors under seventeen years of age whether or not it would be obscene to adults); *see also FCC v. Pacifica Foundation*, 438 U.S. 726 (1978) (upholding FCC finding that broadcast of radio monologue containing references to excretory or sexual activities or organs was "patently offensive" because it was broadcast in the afternoon when children are in the audience); *Action for Children's Television III*, 58 F.3d 654, 664–65 (D.C. Cir. 1995) [hereinafter *ACT III*] (upholding a slightly modified version of the FCC's safe harbor rules for indecent broadcasts

based on government's compelling interest in helping parents exercise their responsibility for their children's well-being).

47. In *ACT III*, the D.C. Circuit reviewed the case law and concluded that the Supreme Court has never required a scientific showing of psychological harm to establish the constitutionality of measures to protect minors from indecent speech: "Congress does not need the testimony of psychiatrists and social scientists in order to take note of the coarsening of impressionable minds that can result from persistent exposure to sexually explicit material just this side of legal obscenity." 58 F.3d at 662. It remains to be seen, however, whether the courts would require scientific evidence of harm caused by media violence in order to establish a compelling government interest.

48. *See, e.g., Playboy*, No. 98-1682, 2000 WL 646196; *Reno*, 117 S. Ct. at 2346 (holding that statute intended to protect minors from harmful communications over the Internet violated the First Amendment in part because the statute suppresses a large amount of speech that adults have a constitutional right to send and receive); *see also Sable Communications v. FCC*, 492 U.S. 115, 128 (1989); *Erzoznick v. Jacksonville*, 422 U.S. 205, 213–14 (1975) (striking down ordinance banning nudity in outdoor movie theaters because "[s]peech that is neither obscene as to youths nor subject to some other legitimate proscription cannot be suppressed solely to protect the young from ideas or images that a legislative body thinks unsuitable for them").

49. *Reno*, 117 S. Ct. at 2346 (citations omitted); *see also Interstate Circuit, Inc. v. Dallas*, 390 U.S. 676 (1968) (invalidating a municipal ordinance that established a local classification board to rate movies as either "suitable for young persons" or "not suitable for young persons" on vagueness grounds).

50. *Id.* (citations omitted).

51. *See* Kevin D. Minsky, *The Constitutionality and Policy Ramifications of the Violent Programming Rating Provision in the Telecommunications Act of 1996*, 47 Syracuse L. Rev. 1301, 1308–12 (1997).

52. *Red Lion Broad. v. FCC*, 395 U.S. 367 (1969). The Supreme Court has held, however, that the scarcity rationale does not apply to cable television and has analyzed regulations affecting speech on cable television under a heightened standard of scrutiny. *See Turner*, 512 U.S. at 639; *see generally* Amy Fitzgerald Ryan, *Don't Touch That V-Chip: A Constitutional Defense of the Television Program Rating Provisions of the Telecommunications Act of 1996*, 87 Geo. L.J. 823, 836-40 (1999). Recently, however, the Court acknowledged that, "Cable television, like broadcast media, presents unique problems, which inform our assessment of the interests at stake, and which may justify restrictions that would be unacceptable in other contexts." *Playboy*, No. 98-1682, 2000 WL 646196, at *7.

53. *Pacifica*, 438 U.S. at 748–49.

54. *Id.* (upholding FCC finding that broadcast of radio monologue containing references to excretory or sexual activities or organs was "patently offensive" because it was broadcast in the afternoon when children are in the audience).

55. *Id.* In *Reno*, the Supreme Court distinguished the Internet from the broadcast media on the ground that the "intrusion on the privacy of the home" rationale does not apply to the Internet. 117 U.S. 2329. Specifically, the Court held that the Internet is not as "invasive" as radio or television, relying on the district court's findings that "communications over the Internet do not 'invade' an individual's home or appear on one's computer unbidden. Users seldom encounter content 'by accident.'" *Id.* at 2343. But with the development of new technologies to deliver movies, music recordings, and electronic games into the home, the level of availability and intrusion of other entertainment media (and the level of volition required) may be converging with broadcast media.

56. *See supra* Part III.B.

57. *See* Appendix G.

58. *Riley v. National Federation of the Blind*, 487 U.S. 781, 791 (1988).

59. These scholars argue that the government's intent would not be relevant: If, in enacting a labeling scheme, the "government were to be motivated not to censor violence, but rather to notify parents and viewers, does not change the level of scrutiny. Because the regulation is content-based, it elicits most exacting scrutiny. The fact that the government might act with benign intentions is irrelevant." Edwards & Berman, *supra* note 5, at 1562 n.323.

60. In addition to these considerations, the recording industry has argued that requiring that the rating or label be used on entertainment media, or in advertising or marketing materials, would also fail to meet the constitutional standard because it amounts to a "prior restraint" on speech. *Recording Industry Memorandum* at 40–41.

61. *See* Letter from Ralph Nader and Gary Ruskin, Executive Director, Commercial Alert to Robert Pitofsky, Chairman, Federal Trade Commission (June 22, 1999), www.essential.org/alert/mediaviolence/ftclet.html (visited Aug. 8, 2000) (calling Commission's attention to European restrictions on advertising to children such as prohibitions against television advertising directly targeting children below 12 years of age in Norway and Sweden).

62. *Interstate Circuit v. City of Dallas*, 390 U.S. 676, 689 (1968) (internal quotations omitted).

63. *See Erznoznik v. City of Jacksonville*, 422 U.S. 205, 212-13 (1975).

64. *See, e.g.*, Jendi Reiter, *Serial Killer Trading Cards and First Amendment Values: A Defense of Content-Based Regulation of Violent Expression*, 62 Alb. L. Rev. 183 (1998); Kevin W. Saunders, *Media Violence and the Obscenity Exception to the First Amendment*, 3 Wm. & Mary Bill Rts. J. 107, 111 (1994). Both Reiter and Saunders advocate using the *Miller* obscenity test to assess violent material. Reiter states:

> Neither the text nor the purposes of the First Amendment prevent the Supreme Court from creating a new category of less-protected speech whose subject matter is violence rather than sex, and using the Miller test to define its boundaries. By analogy to 'obscenity,' this category would have a special name (perhaps

> 'depravity') which would be used as a legal term of art to describe the materials which were subject to regulation. State and municipalities could then define and regulate whichever types of violent entertainment seemed most harmful to them....

Reiter, *supra*, at 209. *But see Video Software Dealers Ass'n v. Webster*, 968 F.2d 684, 687 (8th Cir. 1992) (striking down statute that prohibited sale or rental to minors of videos containing violent content where statutory test for violence was patterned after *Miller*).

65. Reiter, *supra* note 64, at 211 ("Just as the vast majority of works with sexual content do not overstep the boundaries of the *Miller* test, most works with violent content would still receive full First Amendment protection.").

66. *See Winters v. New York*, 333 U.S. 507, 510 (1948) (refusing to treat violent "true crime" stories and detective magazines as obscene under statute banning obscenity: although the Court could see "nothing of possible value to society in these magazines, they are as much entitled to the protection of free speech as the best of literature"); *see also Eclipse Enterprises, Inc. v. Gulotta*, 134 F.3d 63, 67–68 (2d Cir. 1997) (striking down statute prohibiting sale of trading cards depicting violent crimes to minors); *Video Software Dealers Ass'n*, 968 F.2d 84; *Sovereign News v. Falke*, 448 F. Supp. 306, 394 (N.D. Ohio 1977) (striking down obscenity statute applying to material containing violence, brutality, or cruelty), *remanded on other grounds*, 610 F.2d 428 (6th Cir. 1979).

67. *See, e.g.*, Edwards & Berman, *supra* note 5, at 1502–03 (asserting that it would be difficult to draw lines between "thematic" violence and "gratuitous" violence due to the "grave difficulty in drawing the appropriate lines [and that this problem] would turn any such inquiry into a jurisprudential quagmire").

68.
> [I]f 'violence' were defined as the depiction of physical force that causes injury or pain, the definition would sweep in representations of war, sports, accidents, natural disasters, medical and surgical procedures, and even the portrayal in nature films of the predatory behavior of animals. Passages from classic works of literature would also fit the definition.

See Motion Picture Industry Paper at 25.

> [M]usic coupled with lyrics has unique qualities that make interpretation especially subjective, and thus may aggravate vagueness issues . . . . A more specific approach, listing particular violent acts, would be no more successful in passing constitutional muster. Not only would the listed definitions of particular acts of violence themselves potentially suffer from vagueness problems, but such definitions would inevitably reach large categories of valuable speech protected by the First Amendment and would therefore be grossly overbroad.

See Recording Industry Memorandum at 25.

69. The problems of using the *Miller* test for obscenity in practice have been underscored by Justice Potter Stewart's infamous articulation of his "I know it when I see it" approach.

Jacobellis v. Ohio, 378 U.S. 184, 197 (1964).

Appendix D

AN OVERVIEW OF THE ENTERTAINMENT MEDIA INDUSTRIES AND THE DEVELOPMENT OF THEIR RATING AND LABELING SYSTEMS

This Appendix provides an overview of the motion picture, music recording, and electronic game industries, including a brief look at the role they play in the United States economy, as well as information on industry revenue, major players and market share, sales of rated or labeled products, spending statistics, and future trends. The Appendix then summarizes the historical development of the motion picture, music recording, and electronic game rating and labeling systems.

I. A SNAPSHOT OF THE ENTERTAINMENT MEDIA INDUSTRIES

The entertainment media are playing an increasingly significant role in the American economy, and the motion picture, music recording, and electronic game industries are part of that trend. In 1997, the latest year for which figures are available, the entertainment industries contributed an estimated $348 billion to the U.S. economy, accounting for approximately 4.3% of gross domestic product.[1] Over the last 20 years, the real annual rate of growth of the core copyright industries (adjusted for inflation) grew twice as fast as the economy as a whole.[2] And some industry analysts predict that revenues from film, music, and video entertainment may increase from $58 billion in 1998 to nearly $95 billion in 2008.[3] This long-term growth will depend heavily on the development of new technologies to deliver these products to consumers.[4]

Recent mergers have created large entertainment corporations that own diverse assets and are often involved in creating, distributing, and operating more than one category of entertainment media, including movies, records, television shows, broadcast and cable networks, and the Internet.[5] This convergence will transform the entertainment media as these large conglomerates develop new ways to "both shape popular culture and deliver it to audiences around the world."[6]

A. *The Motion Picture Industry*

Revenues: The motion picture industry generates revenue from several sources, including box office sales, home video sales and rentals (including VHS videocassettes and digital video disks ("DVDs")), and licensing for television distribution. In 1999, gross box office sales generated revenues of almost $7.5 billion,[7] while video rentals and sales each generated approximately another $9-10 billion in revenues, for a total of just under $20 billion.[8] Although large screen movies continue to play an influential role in the industry by creating "future demand for films in other mediums, such as home video and television,"[9] consumers are now spending nearly three times as much annually to watch films on their home video systems than in theaters.[10] With the advent of new technologies such as DVD, which offer enhanced quality, interactive capabilities, and extra features, the home video rentals and sales markets will likely continue to grow in importance to the motion picture industry.[11]

Major Players and Market Share: In the box office arena, six film distribution companies – the Walt Disney Co., Viacom, Inc. (Paramount), Sony Corp., Fox Entertainment Group, Time Warner Entertainment, Inc., and Universal Studios Group – dominate the industry.[12] Together, they account for 80% of box office revenues.[13] These film distribution companies share box office revenues with the operators of movie theaters. The largest movie theater chains in 1999 were Regal Cinemas, AMC Entertainment, Cinemark Cinemas, Carmike Cinemas, and Loews Cineplex.[14]

The top firms for sales of home VHS and DVD products in 1999, accounting for nearly 70% of sales revenues, were Warner Home Video,[15] Buena Vista Home Entertainment,[16] Universal Studios Home Video,[17] Paramount Home Video,[18] Columbia Tristar, and Twentieth Century Fox Home Entertainment.[19] The same six companies accounted for approximately 80% of the rental market for home video.[20] The two largest U.S. video retail chains were Blockbuster Video and Hollywood Video;[21] however, consumer electronic chain stores Best Buy and Circuit City surpassed Blockbuster and Hollywood Video to become the top sellers of DVD software in 1999.[22]

Rated or Labeled Product: In 1999, 70% of the 677 movies rated by the MPAA were rated R. Another 16% were rated PG-13, while 9% were rated PG, and 5% received a G rating.[23] None received the NC-17 rating.[24] Of the 25 top-grossing movies (in all ratings categories) at the box office in 1999, almost half received a descriptor for violence while more than half of the 20 top rental movies (in all ratings categories) received a similar violence descriptor.[25]

Audience: The average consumer spending per person on movies in theaters in 1997 was $28.83 and is expected to rise to $33.60 by 2002.[26] Overall, theatrical admissions have been rising during the last decade. In 1999, there were 37,185 movie screens in the U.S., an increase of 3,000 over 1998.[27] According to the 1999 Motion Picture Attendance survey conducted by the MPAA, 20% of annual admissions came from the 16-20 year age group – the largest of any

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cohort. The 12-17 age cohort made up 17% of total annual admissions – the third largest segment in annual theater admissions.[28] Consumer spending on home video was $76.25 on average in 1997 and is projected to grow to $98.34 by 2002.[29]

Future Trends: Technological advances such as DVD and digital television broadcasting (DTV) will affect the future of the movie industry, particularly in the home entertainment arena. DVD players provide sharper pictures and clearer audio than those available from VHS videocassette recorders, can store much more information than VHS tapes, and can offer many features, such as interactive information about movie productions and movie celebrities.[30] DTV will provide consumers clearer and sharper, cinema-like pictures as well as multichannel, CD-quality sound.[31]

B. *The Music Recording Industry*

Revenues: The music recording industry generates nearly all of its revenues from sales of full-length CDs, but also generates revenues from the sale of full-length cassettes, vinyl LPs, single CDs, and music videos.[32] Although Internet sales currently account for only 1% of sales, in the future, the industry may also make significant sales through Internet music purchases.[33] In 1999, the market value of all recorded music sales, according to the RIAA, was $14.6 billion.[34]

Major Players and Market Share: Five distributors – UMG Recordings, Inc., Sony Music Entertainment, Inc., Warner Music Group Inc., EMI Recorded Music, North America, and BMG Entertainment – dominated the recording industry in 1999 and accounted for roughly 80% of retail sales.[35] Each of these companies offers products under a number of different individual divisions known as labels. Despite some recent challenges to the major recording companies from Internet-based music providers, these companies have well-established, exclusive relationships with artists and have large resources to fund the promotion and marketing of new recordings.[36]

Rated or Labeled Product: The recording industry does not officially track sales of music recordings labeled with an explicit-content parental advisory label separately from those for non-labeled recordings. A review of the Billboard 200™ for the weeks of July 31, 1999 and July 29, 2000, however, shows that approximately one-third of the top 100 best-selling CDs for these weeks contained an explicit-content label.[37]

Audience: Consumer spending per person on recorded music (excluding music videos) was $55.20 per person in 1997 and is expected to rise to $68.89 by 2002.[38] Recent data released by the RIAA indicate that, although overall music sales in 1999 were up 6%, the percentage of consumers between 10 and 19 years of age dropped from 25.9% of buyers in 1990 to 21.1% in 1999 – making them the second largest group of music buyers after consumers 45+, who account for 24.7% of sales.[39] To some degree, this may reflect the general aging of the population and older consumers' greater ability to afford compact disks.[40] Nonetheless, the RIAA survey indicates that some of the most popular music genres, *e.g.*, rock and rap/hip hop, are those that appeal to teenagers or younger children.[41]

Future Trends: Almost more than any other industry, the music industry is feeling the effects of technological change.[42] Although the CD remains the most widely used format to deliver music, computers are increasingly being used to receive, store, create, and distribute music. Industry analysts predict that U.S. online sales of music in CD format could grow from $150 million in 1998 to $1 billion by 2003 and to $2 billion by 2007.[43] In addition, downloaded music using digital technology such as MP3 – which allows listeners to download single songs – will become increasingly popular. The long-term implications of these new technologies on the profitability and growth of the recorded music industry are difficult to assess, and the predominant format for music sales in the future remains an open question.[44]

C. The Electronic Game Industry

Revenues: The electronic game industry, which includes personal computer games and console-based video games, is the fastest growing part of the entertainment industry. In 1999, the industry grossed more than $6.1 billion in sales, a 19% increase over 1998 sales levels of $5.5 billion.[45] Video games sales accounted for $4.2 billion of this revenue, while computer games sales accounted for $1.9 billion.[46]

Major Players and Market Share: In 1999, Sony's game console, the PlayStation, accounted for 54% of the gaming hardware market while Nintendo's console, the Nintendo 64, garnered 33% of the market (not including its hand-held Game Boy).[47] Sega's console, the Sega Dreamcast, first launched in September 1999, captured a 14% share of the market.[48] In 1999, Sony had obtained 68% of the software gaming market, while Nintendo accounted for 28%. The five largest console game publishers in 1999 were Nintendo, Electronic Arts, Sony, Midway, and

Acclaim,[49] while the top PC game publishers were Havas Interactive, Electronic Arts, Hasbro Interactive, Mattel Interactive, and Infogrames Entertainment.[50] The top five video game retailers in 1999 were Toys "R" Us, Wal-Mart, Best Buy, KB Toys, and Kmart.[51]

Rated or Labeled Product: The most popular game genres are strategy/role-playing, action, sports and racing, shooting, fighting, and simulation.[52] According to the IDSA, 7% of all video games have been given a mature or M rating.[53] Nearly all M- and T-rated games contain violent content. In fact, of the 352 M-rated games currently listed on the ESRB Web site, 312 or 89% have content descriptors for violence.[54] Of the 981 Teen or T-rated games, 942 or 96% have content descriptors for violence.[55]

Audience: Consumer spending per person on video games in 1997 was $16.42 and is projected to rise to $20.04 in 2002.[56] According to some industry analysts, children make up 60% of the video game audience, and males over the age of 18 who are heads of households account for the other 40%. Other surveys show that the market for interactive games is much broader, with 69% of personal computer gamers 18 years or older and 54% of video console gamers 18 years and older.[57]

Future Trends: The future of the electronic game industry will be affected by new technologies including advances in personal computers, 3-D acceleration technology, and Internet connectivity. The industry expects the next generation of Internet-connected video consoles – such as the soon-to-be released Sony PlayStation 2, the Nintendo Dolphin, and the Microsoft X-Box – to catapult it to the forefront of high-technology home computing and consumer electronics.[58] These consoles will be able to play DVD games, movies, and CDs; download music, movies, and games from the Internet; provide other Internet-based functions like email; and act as a cable TV set-up box.[59] In addition, observers expect that the industry will develop new approaches to game play – such as people simulations and music games – in addition to the traditional game genres such as action, strategy, sports, role-playing, adventure flight/combat simulators, and puzzles.[60]

II. HISTORY OF THE MOTION PICTURE RATING SYSTEM

A. *The Early Days and the Hays Production Code*

From its earliest days, the motion picture industry has been subject to either government regulation or self-regulation. Early concerns about film's potential to reach and influence large audiences led to public calls for greater controls on movies than on books, art, or theater.[61] By 1911, several city and state governments had established censorship boards.[62]

Despite such censorship, heated discussions about film content and local and state regulation continued. In an attempt to head off the threat of extensive government censorship, the motion picture industry in 1922 formed the Motion Picture Producers and Distributors Association, now known as the Motion Picture Association of America ("MPAA"). The Association named Will Hays, then U.S. Postmaster General, the head and tasked him with formulating controls for the moral content of movies.[63]

The resulting "Hays Production Code" regulated movie scenes containing sex, vulgarity, crime, brutality, profanity, obscenity, blasphemy, cruelty to animals, religion, "special subjects," and "national feelings."[64] Early compliance with the Code by the studios was voluntary, but by 1934, the Production Code Administration began to enforce it by granting or denying a "seal of approval" based on adherence to Code standards. The studios agreed not to distribute any movies that did not carry the seal. Movie theaters – at that time owned mostly by the major studios – did not exhibit unapproved films.[65]

Court-ordered divestiture of studio-owned movie theaters in the 1940s helped lead to the demise of the Hays Code.[66] Theaters not owned by the studios were free to exhibit foreign and other films not approved by the Production Code Administration. The Supreme Court explicitly extended constitutional protection to film content in *U.S. v. Paramount Pictures*,[67] emboldening the film industry and further eroding the power of the Code. But to some observers, the greatest impetus to the dismantling of the Code may have been the wider "avalanching revision of American mores and customs" in the 1960s.[68]

In response to social changes, the MPAA liberalized the Code by introducing the advisory "Suggested for Mature Audiences" rating. In 1968, however, the Production Code Administration refused to apply its seal of approval, even with the "mature audiences" advisory, to *Blow-Up*, the first mainstream American film to contain nudity. Metro-Goldwyn-Mayer nevertheless released the film through a subsidiary company, thereby flouting the MPAA voluntary agreement that no member studios would distribute a film without a Code seal.[69]

The U.S. Supreme Court dealt a final blow to the Hays Production Code in 1968 in *Interstate Circuit, Inc. v. City of Dallas.*[70] Although it struck down Dallas's Motion Picture Classification Board as unconstitutionally vague, the Court stated that "because of its strong and abiding interest in youth, a State may regulate the dissemination to juveniles of, and their access to, material objectionable as to them, but which a State clearly could not regulate as to adults."[71] Faced with the prospect of continuing and conflicting regulation by numerous state and local ratings boards, the motion picture industry devised a new self-regulatory system.

B. The Modern Motion Picture Rating System

The new voluntary[72] self-regulatory rating system was developed by the MPAA in conjunction with the National Association of Theatre Owners ("NATO") and the International Film Importers & Distributors of America.[73] In its November 1968 announcement of the system, the MPAA stated that the purpose of the rating system was not to approve or disapprove the content of films, but rather to advise parents as to the suitability of a film for their young children[74] with respect to theme, violence, language, nudity, sensuality, drug abuse, and other elements.[75]

The first four rating categories were:

G for General Audiences – all ages admitted;
M for Mature Audiences – parental guidance suggested, but all ages admitted;
R for Restricted – children under 16[76] not admitted without an accompanying parent or guardian; and
X – no one under 17 admitted. (Age varied in some jurisdictions.)[77]

The MPAA had originally planned to use only the G, M, and R ratings, leaving it up to parents to decide whether they wished to accompany their child to adult-oriented films. However, theater owners feared possible lawsuits by parents under state or local law and wanted the right to exclude children from specific films. NATO urged the creation of an adults only category, and the "X" category was added to the rating categories. The MPAA trademarked the category symbols, except for the "X."[78]

The first change to the rating system occurred in 1969, when the MPAA changed the "M" category to "GP," meaning "General Audiences: Parental Guidance suggested."[79] A year later, the MPAA again renamed "GP" to its current label, "PG: Parental Guidance Suggested. Some Material May Not Be Suitable For Children."[80] In 1984, in response to controversy over violence in the PG-rated film *Indiana Jones and the Temple of Doom*, the MPAA introduced the PG-13 rating. The label means "Parents Strongly Cautioned. Some Material May Be Inappropriate for Children Under 13."[81]

In 1990, the MPAA replaced the "X" rating with "NC-17: No Children Under 17 Admitted," a copyrighted symbol.[82] The change was precipitated by some observers' criticism of the "X" rating as tantamount to a "kiss of death" to a motion picture's chance of financial success.[83] The change to NC-17 also followed a state court's condemnation of the MPAA's rating system, particularly the labeling of some films with the X rating.[84] The NC-17 rating, however, appears to have inherited some of the X stigma.[85] Only 65 films are listed in the MPAA/CARA database as rated NC-17 (ten of these had been rated X before the NC-17 rating took effect).[86] Few are recognizable as mainstream films.[87]

Also in 1990, the MPAA began providing brief explanations to theater owners and certain media as to why films had been rated R *(e.g.*, "rated R for violence and nudity"). In 1992, the Association introduced similar rating reasons for the PG and PG-13 ratings and, in 1994, for the NC-17 rating. These content descriptors do not appear in print or broadcast advertising, but are available at the MPAA Web sites, www.mpaa.org., www.filmratings.com, and www.cara.org.[88]

The final change to date in the original MPAA rating system occurred in 1996, when the MPAA changed the meaning of NC-17 from "no children under 17 admitted. Age may vary in certain areas" to "no one 17 and under admitted," thereby effectively raising the age of admission from 17 to 18.

The MPAA has taken steps to increase public awareness of its rating system. The Web sites mentioned above, in addition to providing the reasons for the ratings, also provide an explanation of the rating system in general. The MPAA also has published a booklet detailing the history, purpose, and meaning of the system, as well as the rating decision-making process.[89]

III. HISTORY OF THE MUSIC RECORDING LABELING PROGRAM

A. ***Parental Pressure for a Music Rating System***

In May 1985, the Parents' Music Resource Center ("PMRC"),[90] along with the National Parent Teacher Association ("NPTA"), began a dialogue with the Recording Industry Association of America ("RIAA")[91] to encourage the recording industry to develop a voluntary system "to protect our children" from graphic sexual and violent lyrics.[92] The PMRC initially proposed that the recording industry adopt a rating system for recordings similar to the rating system used for motion pictures.[93] Among other proposals, the PMRC suggested that the front of record album jackets and cassettes prominently display ratings – "X" for profane, sexually explicit, or violent lyrics, "O" for lyrics with references to the occult, and "D/A" for lyrics that encourage or glorify the use of drugs or alcohol.[94]

In August 1985, the RIAA responded to the PMRC's calls for self-regulation by acknowledging "the legitimate concerns" of parents who wished to limit their children's exposure to recordings with explicit lyrics and offering to place "a printed inscription on packaging of future recording releases to identify blatant explicit lyric content in order to inform concerned parents and children, and to make possible parental discretion."[95] Under the RIAA proposal, each record company would identify which of its recordings required an advisory. The RIAA, however, opposed the PMRC's request for a more formalized rating system, characterizing this option as "totally impracticable" due to the large number of songs released each year.[96] The association also rejected the PMRC's other, more extensive, proposals.[97]

In response to the RIAA's proposal, the PMRC countered that while generic labeling may sometimes be acceptable, "it certainly is not in the instance that each record company would apply its own standard about what constitutes 'blatant explicit lyric content.'"[98] The PMRC noted that "[d]ifferent standards by each company would create confusion among consumers rather than serving as a benefit to them in deciding what is appropriate."[99] Accordingly, the PMRC recommended that the recording industry appoint a panel of industry and consumer representatives to develop guidelines that the individual companies could use when deciding which of their recordings to label.[100]

With no formal agreement reached between industry and consumer groups, the Senate Commerce Committee convened hearings in September 1985 to examine sexually explicit and violent rock music lyrics.[101] The Committee heard testimony from the PMRC and NPTA, as well as the RIAA and several musicians.[102] Faced with charges of censorship, Senator John Danforth, the Committee Chairman, stated that the purpose of the hearing was not to consider legislation, but rather to discuss the issues surrounding explicit lyrics in rock music.[103] Tipper Gore, who testified at the hearings on behalf of the PMRC, maintained that the essence of the PMRC proposal was a voluntary labeling system, without government action.[104]

B. The Initial Industry Response

As a result of this mounting pressure from both Congress and parents' advocacy groups, the RIAA announced an agreement with the PMRC and the NPTA on November 1, 1985, whereby participating record companies would place an advisory on recordings containing lyrics with strong language or that explicitly referred to sex, violence, or substance abuse.[105] Under the plan, each record company would decide independently which albums contained "explicit" lyrics, without using uniform guidelines. On the albums selected, the advisory "Parental Advisory – Explicit Lyrics" would appear boxed and lined on the lower corner of the back cover.[106] In addition, as an alternative to labeling recordings as "explicit," the companies had the option of providing the lyrics on the back of the LP jacket or in a lyric sheet.[107] Twenty-two recording companies, including all the major companies, supported this proposed labeling system.[108]

The recording industry's initial effort at implementing this labeling system, however, met with extensive criticism. In 1986, the PMRC identified numerous problems with the industry's compliance with the voluntary labeling program,[109] including complaints that the notices were "hard to find, easily removed, incorrectly worded, displaced, or too small to read,"[110] and that 25 albums released between January 1986 and May 1987 contained explicit lyrics but bore neither an advisory nor printed lyrics.[111]

C. Concerns at the Retail Level

By 1990, approximately one third of the states had grown dissatisfied with the recording industry's self-regulatory efforts and considered bills requiring the labeling of music with explicit lyrics or prohibiting the sale of such music to minors.[112] Among the proposals considered by the states were provisions prohibiting retailers from selling "offensive" or labeled music to minors; requiring retailers to separate "obscene" materials and to provide a full refund to parents who objected to a purchased album; and prohibiting minors from attending performances of music with explicit lyrics.[113] A Pennsylvania bill, for example, called for a label that would read, "WARNING: May contain explicit lyrics descriptive of or advocating one or more of the following: suicide, sodomy, incest, bestiality, sadomasochism, adultery, sexual activity in a violent context, murder, morbid violence, use of illegal drugs or alcohol. PARENTAL ADVISORY."[114] The PMRC opposed these legislative proposals, continuing to support industry self-regulation over government involvement.[115]

Much of the proposed legislation sought to penalize retailers who sold explicit-content labeled recordings.[116] At the same time, these retailers also were facing mounting pressure from local communities, advocacy groups, and public figures regarding the sale of explicit music.[117] For example, Wal-Mart stopped carrying rock-and-roll records and magazines in response to complaints made by the Reverend Jimmy Swaggert, and Sears and J.C. Penney announced that they would not sell any records with warning labels.[118] In addition, many shopping mall retailers feared violating long-term leases that prohibited them from carrying "adult" material.[119]

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For these reasons, music retailers[120] and their trade associations[121] encouraged the recording industry to establish an industry-wide standardized label, with uniform size and placement requirements.[122] The NARM asserted that adopting a visible, standardized label would make explicit recordings easily identifiable, would help in training employees to distinguish stickered products,[123] and would demonstrate to legislators that government intervention was unnecessary.[124]

D. The Current Parental Advisory Explicit Content Label

Amidst these pressures, the recording companies and the retailers developed a uniform advisory label and, in May 1990, the recording industry unveiled a new label "standard in size, color, and placement."[125] This black and white logo read "Parental Advisory – Explicit Lyrics." The logo was to appear in the right-hand corner of the permanent packaging under the cellophane shrink wrap (instead of as a peel-off sticker), and was to measure 1 inch by ½ inch on cassettes or CD jewel boxes, and 1½ inches by 1 inch on albums and CD long boxes.[126] Nearly all of the RIAA's 92 member companies agreed to use the new system.[127] One aspect of the industry approach that did not change, however, was that each record company continued to determine which recordings would display the logo, using its own definition of "explicit" lyrics.[128]

E. Continued Calls for Reform and the Industry's Response

Despite the new standardized label, Congress conducted hearings in February and May 1994 to discuss violent lyrics in music recordings and to examine the sufficiency of the industry's labeling system.[129] As with the 1985 proceedings, these hearings did not contemplate legislation, and featured testimony by concerned citizens and record industry artists and executives.[130] Critics of the voluntary labeling system stated that "the parental guidance sticker system presently being used in the recording industry is simply not enough," and advocated a rating system similar to the one used for motion pictures.[131] The recording industry responded that such a rating system would be unworkable because the recording companies "would not be equipped to make those decisions," as it is nearly impossible to evaluate the meaning of offensive words in the context of particular songs.[132]

These congressional hearings, accompanied by the ongoing efforts of consumer groups to call attention to the violent and sexually graphic lyrics in many rock and rap CDs, motivated the major recording companies to coordinate with the RIAA and to re-evaluate the labeling program.[133] In mid-1995, the RIAA indicated that it would make the review "a top priority" and would consider a number of proposed changes, including developing "ratings" for music recordings similar to movie ratings or adding descriptive commentary to the advisory label.[134] As part of the review process, the RIAA and the NARM conducted a series of focus groups, in which parents stated that they wanted a "visible and credible" voluntary labeling program to help them monitor the music their children purchased.[135]

Upon concluding its review, the industry retained its uniform logo and the process by which recordings were labeled, changing only the wording of the logo from "explicit lyrics" to "explicit content" to cover graphic music videos.[136] The RIAA also issued Usage Guidelines, still in effect today, which provided that the logo should be 1 inch by 5/8 inch on cassettes, CDs, vinyl records, and music videos, and should be placed on the permanent packaging under the cellophane shrink wrap.[137]

Instead of changing its parental advisory program, the recording industry focused on increasing public awareness of its existing advisory label. In August 1996, the RIAA and the NARM provided retailers with posters that displayed the label and described its purpose.[138] This point-of-purchase material, printed in deep yellow, explained to consumers that "The Parental Advisory is a notice to parents that recordings identified by this logo may contain strong language or depictions of violence, sex, or substance abuse."[139] In addition, the RIAA distributed guidelines to recording companies, encouraging them to use the voluntary system and instructing them on "proper" usage of the advisory logo.[140]

In 1997 and 1998, the Senate held additional hearings on violence in music.[141] In the 1997 hearings, one senator called upon the recording industry to improve "its one-size-fits-all labeling system . . . to give parents more of the basic information they need to make informed judgments."[142] In addition, individual states have continued to consider legislation concerning the sale of music with explicit lyrics to minors.[143] The recording industry, however, has maintained that the parental advisory logo provides parents with valuable information.[144] Defending its self-regulatory labeling system, the recording industry stated that:

> By voluntarily creating and administering the Parental Advisory Program, U.S. record companies have acknowledged their responsibility in the collaborative effort to help parents set and enforce standards for their children, without imposing those standards on others.[145]

Although the industry initially did not change its labeling system, the RIAA revised its Web site, www.riaa.com, in May 2000 to highlight the Parental Advisory Labeling Program and to include additional information about the reasoning behind and mechanics of this program. On June 8, 2000, the RIAA joined with the MPAA and the ESRB in announcing a Web site, www.parentalguide.org, that provides links to the different industry associations involved with entertainment rating or labeling systems.

In late August 2000, the RIAA recommended revisions to the parental advisory label program, to be effective October 1, 2000. According to the recommendation, the RIAA now asks that industry members: 1) use general guidelines, included in an RIAA memorandum, to determine whether a recording warrants a parental advisory label; 2) adopt a policy that the parental advisory label or other prominent notice of explicit content should appear in print advertising for explicit-labeled recordings and that advertising for explicit-content labeled recordings should not appear in publications, Web sites, or other commercial outlets whose primary (*i.e.*, 50% or more) market demographic is 16 years of age or younger; and 3) adopt a policy that the parental advisory label should appear prominently in online retail sites in all stages of the transaction and that online retail sites should link to the entertainment industry's Web site, www.parentalguide.org. Further, the RIAA committed to conduct an annual inquiry of its policies and their implementation.

IV. HISTORY OF THE ELECTRONIC GAME INDUSTRY RATING SYSTEMS

A. *Background*

The electronic game industry initiated rating systems largely in response to threatened federal intervention in the early 1990's. On December 9, 1993, the Senate Subcommittee on Juvenile Justice and the Government Affairs Subcommittee on Regulation and Government Information convened the first of a series of three joint hearings entitled *Rating Video Games: A Parent's Guide to Games.*[146] The impetus for the hearing was a bill proposed by Senators Joseph Lieberman and Herbert Kohl that would have "establish[ed] the National Independent Council for Entertainment in Video Devices as an independent agency of the federal government to oversee the development of 'voluntary' standards to warn parents of the content of video games."[147]

In response to this proposed federal action, two major game developers – Sega of America and Nintendo of America – agreed to work together as part of a coalition of game developers to establish a rating system for video games.[148] The Software Publishers Association ("SPA") – an industry trade group for developers, publishers, and online distributors of software for personal computers – and the Video Software Dealers Association ("VSDA") – an industry trade group representing retail sellers of software – announced the formation of an industry coalition at a press conference shortly before the December 9, 1993 Senate hearing.[149]

In January 1994, the SPA (now the Software & Information Industry Association), along with other trade associations,[150] set up the Game Ratings Working Group, which brought together representatives from both the video game and computer game industries.[151] The companies and organizations participating in the Working Group "represent[ed] nearly 3,000 software developers, publishers, and distributors – virtually the entire personal computer software industry."[152]

But a split soon emerged within the Working Group between the developers and publishers of personal computer software and the developers and publishers of video game software, the latter of which can be played only on a cartridge- or compact disc-based console system, such as those produced by Sega and Nintendo.[153] By April 1994, a group of video game companies had formed the Interactive Digital Software Association ("IDSA") to advance the industry's fledgling self-regulatory efforts.[154] The IDSA and the Working Group proceeded to develop separate rating systems for interactive software.[155] In the meantime, the American Amusement Machine Association, an industry trade group representing over 120 manufacturers, distributors, and parts suppliers of coin-operated amusement equipment, began creating yet a third rating system to provide public disclosure of the violent content of coin-operated video games.[156]

B. The IDSA/ESRB System

Congress held follow-up hearings on the video game industry's self-regulatory efforts in March, June, and July 1994. In March, Jack Heistand, a representative of the Interactive Entertainment Industry Rating System Committee (a pre-cursor to the IDSA),[157] outlined five principles underlying the video game industry's plans for a self-regulatory system: (1) the Committee would form a new industry trade association (the IDSA) and create, as an independent arm of the association, a ratings board made up of people from a variety of fields, including educators, parents, child development experts, business representatives, and others;[158] (2) the board would determine a final rating for games before they reach store shelves;[159] (3) the board would develop rating symbols, which would be accompanied by a description of the content of the game, such as "contains graphic depictions of animated violence";[160] (4) all packaging, advertising (television, radio, online, and print), and consumer marketing material would display the rating symbol;[161] and (5) all members of the trade association would agree to adopt a voluntary advertising code of conduct that would include guidelines on "such things as properly targeting ads to users for whom the product is rated as appropriate."[162]

Mr. Heistand also described several elements of the IDSA's rating process. The ratings board would have an executive director (chosen by the trade association's board of directors) who would be responsible for selecting "expert independent raters" whose identities would be unknown to the industry and the trade association staff.[163] The raters would be paid by the ratings board, not the trade association.[164] To obtain a rating, a publisher would submit a video tape of game play to the ratings board as late in the development process as possible. Publishers would be required to submit tapes that "show the boundaries of the game and include the most extreme portions that could affect the rating," along with an affidavit answering a series of questions about the game and certifying that the submission is representative of game play.[165] The system would result in "tough sanctions" against companies that withheld relevant information and, in effect, secured a rating fraudulently.[166]

In June and July 1994, Mr. Heistand and Douglas Lowenstein, president of the newly formed IDSA, reported to Congress on IDSA's progress in creating a rating system,[167] which was formally approved and implemented in September 1994, including the formation of "an independent, third-party entity" (eventually known as the Entertainment Software Rating Board ("ESRB")) to assign ratings to software.[168]

The IDSA rating system is now the industry's predominant rating system. It covers entertainment software for all platforms, including personal computers and video game consoles, that are intended for distribution through retail establishments, mail order, and online.[169] The ESRB's rating icon can be found on all console-based video games and on more than 80% of personal computer software games;[170] the remainder of personal computer games, which are unrated, are primarily educational titles for early childhood users.[171]

The IDSA and the ESRB have taken steps to inform the public of their rating systems. These associations published the ESRB Parent's Guide to Interactive Entertainment in 1998, which explains the rating symbols and content descriptors for video games, personal computer software, and Internet Web sites.[172] In November 1999, the ESRB launched a new initiative to make parents aware of the electronic game rating systems,[173] particularly in light of the ESRB's adoption of new standards in January 2000 to increase the size of ratings icons and to use descriptors in advertising, including a voice-over disclosure in television advertising.[174]

C. The RSAC System

In September 1994, the SPA-sponsored Working Group founded the Recreational Software Advisory Council ("RSAC"), with the mission of "providing parents and other consumers with the information they need to make wise decisions about the recreational software they bring home."[175] As explained to Congress by the SPA counsel, RSAC was incorporated as an organization outside of any industry trade association "[b]ecause independence from industry is essential for the credibility of a ratings program . . . ."[176]

Like the IDSA/ESRB system, the RSAC system assigns ratings to software titles before they are shipped to retailers, and authorizes the imposition of penalties, such as fines and product recalls, for companies that submit misleading information about game content during the rating process.[177] The assignment of an RSAC rating is largely based on a self-report of the game's content by the developer or publisher after completing sworn responses to a detailed questionnaire. The developer or publisher is required to complete a highly specific, definition-intensive questionnaire concerning the game's content, and a computer program automatically assigns a rating to the game based on these answers.[178]

Unlike the IDSA/ESRB system, the RSAC system does not rate games based on age appropriateness.[179] Rather, it rates content according to three criteria: violence, nudity/sex, and language. If there is no violence, nudity/sex, or offensive language in the game, the game receives an "All" rating, meaning that it is suitable for all audiences. If the game contains any degree of violence, nudity/sex, or language, however, a content icon(s) representing violence, nudity/sex, and/or language will appear on the game.

A four-degree thermometer icon also appears next to the RSAC content icon; a higher "temperature" on the thermometer indicates a more intense degree of violence, sexual content, or profanity. Thus, for example, a game depicting situations in which creatures are injured or killed might justify a violence icon (pictured as a bomb with a burning fuse) and a temperature level of one degree, whereas a violent game that depicts torture or rape would justify a violence icon and a temperature level of four degrees. Depending upon the violent content of the game, descriptors such as "creatures killed," "humans killed," "blood and gore," or "wanton and gratuitous violence; rape" also may appear on the RSAC Advisory label.

The RSAC rating must be displayed in accordance with minimum size requirements on the front panel of all packaging and printed retail displays associated with the rated software. If the software is distributed in a purely electronic form without significant physical packaging, the ratings information must be displayed prominently on the boot-up display of the software title;[180] the IDSA/ESRB system, by contrast, requires only that the rating information appear on the page where game information (such as price) is provided, not within the game software itself. The RSAC system has not imposed any requirements for the display of rating information in marketing materials or regarding the manner or media in which it is appropriate to advertise electronic games.[181]

As noted, the IDSA/ESRB rating system has become the industry's rating system of choice. By the end of 1999, only one software publisher was using the RSAC's rating system for its games,[182] and the last time any one of the eleven game publishers studied for this Report sought an RSAC rating was in February 1997.

D. The System for Coin-Operated Games

The American Amusement Machine Association ("AAMA") and the Amusement and Music Operators' Association ("AMOA") manage a separate industry rating system for coin-operated games. These two associations, with help from the International Association of Family Entertainment Centers and the International Association of Amusement Parks and Attractions, initiated the development of a Parental Advisory System, concurrent with the development of the ESRB and RSAC systems.[183] The Parental Advisory System was not implemented, however, until 1998.[184]

Unlike the ESRB system, the Parental Advisory System does not use a rating board. Similar to the RSAC system, the AAMA provides manufacturers and developers with a "System Guidelines" sheet to help them determine the appropriate rating through a series of questions about the game's content.[185] Like the RSAC system, the Parental Advisory System does not link the suitability of games with mild or strong descriptors to any age. However, a Code of Conduct developed by industry trade groups encourages the staff of coin-operated game establishments to discourage "children who are unaccompanied by a parent" from playing video games labeled with a red (strong) disclosure message.[186] The Code also states that the manufacturers and developers of video coin-operated games should strive to create fewer violent games and more games that are suitable for people of all ages.[187]

The Parental Advisory System uses four different content descriptors: animated violence, life-like violence, sexual content, and language. Warning labels include one of the above content descriptors on a green, yellow, or red sticker depending on the level of that behavior[188] exhibited in the game – green meaning "suitable for everyone," yellow meaning "mild," and red meaning "strong." Because each content descriptor warrants a separate disclosure message, it is possible for one coin-operated game to have four red ("strong") disclosure messages, one for each content descriptor. These disclosure messages must be of a minimum size, and must appear in the artwork of the front header portion of each game unit.[189] Beginning in the summer of 1999, AAMA also has asked manufacturers to include in all advertising for coin-op video games a color-coded Parental Advisory Disclosure Message setting out the games' content descriptor (*e.g.*, "Life Like Violence Mild").[190]

Although an industry study found that parents "offered praise for the industry's initiative in providing information regarding the content" of games, it also concluded that parents "explicitly permitted their children to play coin-op games that contained 'Strong'-rated content."[191] Believing that the Parental Advisory System is ineffective, some consumers have begun grassroots campaigns encouraging retailers voluntarily to remove violent games from their property.[192] Several companies, such as Wal-Mart, Disney, and Capcom, have removed violent games from their properties.[193] Most recently, the mayor of Indianapolis signed an ordinance prohibiting access by children under age 18 without parental accompaniment to coin-operated games that contain "graphic violence" or "strong sexual content," as well as requiring that such games be kept out of the view of minors.[194]

ENDNOTES

1. International Intellectual Property Alliance, *Copyright Industries in the U.S. Economy: The 1999 Report* (released Dec. 1999), www.iipa.com/execsummary.pdf (visited July 28, 2000). The figures cited are for the "core copyright industries," which include the motion picture industry (television, theatrical, and home video); the recording industry (records, tapes, and CDs); the music publishing industry; the book, journal, and newspaper publishing industries; the computer software industry (including interactive software on all platforms); the legitimate theater; the advertising industry; and the radio, television, and cable broadcasting industries. IIPA's member associations include the Motion Picture Association of America ("MPAA"), the Recording Industry Association of America ("RIAA"), and the Interactive Digital Software Association ("IDSA").

2. *Id.*

3. Paul Kagan & Associates, Inc., *American Media and Entertainment Growing Three Times as Fast as the Nation's Economy; Will Reach $1.1 Trillion in Revenue by 2008*, www.kagan.com/screen/kmarket/mc08.html (visited July 27, 2000).

4. Standard & Poor's, *Industry Surveys, Movies & Home Entertainment* [hereinafter *S&P Entertainment Industry Survey*] May 11, 2000, at 11.

5. *Id.* at 1-3, 12-13.

6. *Id.* at 16.

7. *Id.* at 9-10; *see* MPA Research Ass'n, *MPAA 1999 U.S. Economic Review*, at 29 (2000), www.mpaa.org/useconomicreview/1999Economic/sld002.htm (visited July 28, 2000).

8. *Id. See* Thomas K. Arnold, *Electronic Chains Kings of DVD*, The Hollywood Reporter, Apr. 11, 2000 (citing 1999 VHS and DVD sales figures of $8.9 billion and rental figures of roughly $10 billion); ***Home Video Will Remain Studio Breadwinner – Schroder***, Video Week, Jan. 10, 2000 (citing figures from investment bank Schroder & Co. showing home video as single largest source of income for motion picture distributors); *see also* U.S. Census Bureau, *Current Business Reports: 1998 Service Annual* Survey, at 33-34 (issued Dec. 1999) (Table 6.1: Motion Pictures (SIC 78) and Amusement and Recreation Services (SIC 79) – Estimated Receipts for Taxable Firms: 1989 Through 1998), www.census.gov/svsd/sasann/view/tab6.pdf (visited July 27, 2000).

9. *S&P Entertainment Industry Survey*, *supra* note 4, at 9.

10. *Id.*

11. *See, e.g.*, Dianne Garrett, *Company Town; Little Doubt About Future of DVD; Entertainment: Format Surged in Last 12 Months, Passing Several Milestones*, L.A. Times, Jan. 5, 2000, at C7; Christopher Parkes, *Hollywood Begins a Love-Affair with DVD Film Industry, After a Slow Start, US Studios Are Releasing a Flood of New and Old Films with Interactive Features*, Fin. Times, July 20, 2000 (USA Edition), at 4; Terry Pristin, *Making VCRs Obsolete: Hailed as the "Medium of the Millennium" DVDs Look Set to Become the Most Popular Item in*

Home Entertainment, and Even Video Store Owners Are Happy, Nat'l Post, Jan. 10, 2000, at C09 (citing predictions that DVDs "are on track to overtake video tape in a few years as the home entertainment format of choice"). While proclaiming the phenomenal growth of DVDs, most in the home video industry recognize that DVDs may eventually be overtaken by the development of video-on-demand films delivered through enhanced cable systems, satellite TV, and the Internet. *Id.*

12. *S&P Entertainment Industry Survey, supra* note 4, at 9.

13. *Id.*

14. **The Ten Largest North American Theater Chains (1999)**:

Chains	**Screens**	**Number of Locations**	**Average Screens Per Location**
Regal Cinemas	4,474	438	10.2
Loews Cineplex Entertainment	2,916	400	7.3
AMC Entertainment	2,868	210	13.7
Carmike Cinemas	2,848	458	6.2
Cinemark USA	2,769	257	7.0
United Artists Theater Circuit	2,036	291	7.0
Hoyts Cinema	1,542	193	8.0
National Amusements	1,300	127	10.2
General Cinema Theatres	1,235	153	8.1
Famous Players	832	114	7.3
Top Ten Total	**22,820**	**2,641**	–
Others	3,111	472	–
Total	**25,931**	**3,113**	–

See S&P Entertainment Survey, supra note 4, at 12.

15. Warner Home Video includes New Line Cinema, HBO, Warner Vision, and Turner.

16. Buena Vista Home Video includes Disney labels, Miramax, and Dimension.

17. Universal Home Video includes Dreamworks.

18. Paramount Home Video includes Viacom-owned Nickelodeon.

19. The six largest companies' share of the sales market for 1999 was as follows:

Company	**Percentage of Total Market Share (reported as of 12/26/99)**
Warner Home Video	20.8
Buena Vista Home Entertainment (Disney)	16.0
Universal Studios Home Video	10.2
Paramount Home Video	8.4
Columbia TriStar Home Video	7.8
20th Century Fox Home Entertainment	6.7

VideoScan, Video Week, Jan. 3, 2000. These figures are based on consumer purchases from point-of-sale data in 16,000 retail locations (not including rentals, supermarkets, direct response, and Internet sales).

20. The six largest companies' share of the rental market for 1999 was as follows:

Company	**Percentage of Total Market Share**
Warner Home Video	21.5
Buena Vista Home Entertainment (Disney)	19.2
Columbia TriStar Home Video	13
Universal Studios Home Video	9.5
20th Century Fox Home Entertainment	9
Paramount Home Video	8.8

1999 Video Rental Market Shares, PRC News, Feb. 2000, at 1 (citing figures from the Video Software Dealers Association and VidTrac). Although some reports of the precise market shares of each of these six companies vary slightly, *see, e.g.,* Scott Hettrick, *Disney Is Tops in Video Revenue, Research Says*, Video Bus., Apr. 17, 2000, at 4, analysts agree that Warner Home Video and Buena Vista Home Entertainment are the market leaders for both sales and rentals of VHS and DVD products.

21. **Top Four Home Video Rental Chains (1998):**

Chain	Stores	1997 Units Rented (mill)	1998 Units Rented (mill)	1998 % of Revenue From Rentals
Blockbuster Inc.	6200*	814.5	918.6	81
Hollywood Entertainment Corp.	1350	147.0	203.0	79
Video Update	700	35.6	83.6	83
Movie Gallery	800	63.0	65.5	81
Totals	9050	1060.1	1270.7	–

**Includes international units.*

See Hooray For Hollywood, Chain Store Age, June 1999, at 46. Blockbuster and Hollywood Video remain the dominant retailers. As of year-end 1999, Blockbuster had about 4,795 domestic stores, while Hollywood Video had 1,615 stores. *S&P Entertainment Industry Survey*, *supra* note 4, at 10.

22. *See* Arnold, *supra* note 8.

23. *MPAA 1999 U.S. Economic Review*, *supra* note 7, at 14.

24. *Id.*

25. These figures were derived from the films and ratings available on www.filmratings.com and were calculated using the content descriptors provided by the MPAA for several categories of violence including: "sci-fi violence," "adventure violence," "sexual violence," "wacky violence," and "strong violence."

26. U.S. Census Bureau, *Statistical Abstract of the United States: 1999* [hereinafter *1999 Census Bureau Statistics*], at 580 (Table No. 920, *Media Usage and Consumer Spending: 1992 to 2002*) (released Dec. 13, 1999), www.census.gov/prod/99pubs/99statab/sec18.pdf (visited July 28, 2000). This estimate includes only persons aged 12 years and older.

27. *MPAA 1999 U.S. Economic Review*, *supra* note 7, at 26.

28. MPA Research Ass'n, *1999 Motion Picture Attendance Study*, at 1 (March 7, 2000), www.mpaa.org/useconomicreview/1999Summary/index.htm (visited July 28, 2000).

29. *1999 Census Bureau Statistics*, *supra* note 26.

30. *See generally* note 11 *supra*. *See also S&P Entertainment Industry Survey*, *supra* note 4, at 7.

31. *Id.*

32. *See* Recording Industry Association of America, *1999 Consumer Profile* [hereinafter *RIAA Profile*], www.riaa.com/pdf/1999_Consumer_Profile.2.pdf (visited July 28, 2000). The profile, conducted by Peter Hart Research, is based on a national telephone and Internet survey of past month music buyers (3,051 per year). The pollsters weighted the survey data by age and sex, and then projected the results to reflect the U.S. population age 10-and-over. *See also* Ed Christman, *Hit-Driven Album Sales Lead in '99 Report*, Billboard, Jan. 15, 2000, at 5 (reporting data from SoundScan, which collects point-of-sale information from approximately 85% of all music sellers for all formats and projects totals for the entire U.S. market).

33. *S&P Entertainment Industry Survey, supra* note 4, at 16.

34. *RIAA Profile*, *supra* note 32. These figures are based on manufacturers' shipments at suggested list prices. The National Association of Recording Merchandisers reports that the gross dollar volume for all music products in 1999 was $10.49 billion. *See* National Association of Recording Merchandisers, *NARM 1999 Annual Survey Results* (released June 12, 2000), www.narm.com./programs/research/surv99/99AnnualSurvey72.pdf (visited July 28, 2000). NARM's figures are lower than those reported by the RIAA because it reports what consumers actually paid for the music they purchased, as opposed to manufacturers' music shipments at list price.

35. *See S&P Entertainment Industry Survey, supra* note 4, at 10-11.

Five Largest Music Distributors Total Album Market Share (January to June 2000):

Publisher	Percentage of Total Market Share
Universal Music Group	26.8
BMG (Bertelsmann)	17.0
Warner Music Group	15.6
Sony Music	15.5
EMI Recorded Music	8.8
Independents/Other	16.3

See Ed Christman, *Universal No. 1 Album Distributor for Year's First Half*, Billboard, July 22, 2000, at 73 (reporting market share rankings from SoundScan for the period beginning Jan. 3, 2000 and ending July 2, 2000). These figures are roughly consistent with the overall 1999 statistics. *See* Ed Christman, *Universal Is '99's Top Distributor in Several Markets*, Billboard, Jan. 22, 2000, at 57. The proposed merger of Time Warner's and EMI's music operations would catapult these companies to the No. 2 position, behind Universal. Don Jeffrey, *Warner EMI Deal Dramatizes Incredible Shrinking Biz – Firm's Varying Strengths Likely to Make Smooth Fit*, Billboard, Feb. 5, 2000, at 5 (estimating combined market share of approximately 25.3%, about a percentage point behind Universal); Brian Garrity & Don Jeffrey, *Warner EMI Deal Dramatizes Incredible Shrinking Biz – Merger Raises Stakes for Remaining Majors*, Billboard, Feb. 5, 2000, at 5; *see S&P Entertainment Industry Survey, supra* note 4, at 2.

36. *See* Alex Berenson & Matt Richtel, *Heartbreakers, Dream Makers; Despite Digital Upstarts, Big Labels Still Rule the Music Industry*, N.Y. Times, June 25, 2000, § 3, at 1.

37. *See* www.billboard.com/charts/bb200.asp (visited July 24, 2000) and www.billboard.com/charts/ago/lastyear.asp (visited July 24, 2000).

38. *1999 Census Bureau Statistics, supra* note 26.

39. **Age Distribution of Record Buyers (1990 & 1999)**:

Age Category	Percentage of Total (1990)	Percentage of Total (1999)
10-14	7.6	8.5
15-19	18.3	12.6
20-24	16.5	12.6
25-29	14.6	10.5
30-34	13.2	10.1
35-39	10.2	10.4
40-44	7.8	9.3
45+	11.1	24.7

See RIAA Profile, supra note 32; *see also* Anna Wilde Mathews & Martin Peers, *Marketing & Media: Teen Music Buying Dropped Last Year, According to Data*, Wall St. J., June 26, 2000, at B14.

40. *S&P Entertainment Industry Survey, supra* note 4, at 15.

41. *Id.* **Music Industry Sales Profile (1990 & 1999)**:

Category	Percentage of Sales and Revenue (1990)	Percentage of Sales and Revenue (1999)
Rock	36.1	25.2
Country	0.6	10.8
Rap/Hip Hop	8.5	10.8 (Rap 8.8 + Hip Hop 2.0)
R&B/Urban	11.6	10.5
Pop	13.7	10.3

See RIAA Profile, supra note 32; *see also* Christman, *supra* note 32.

42. Jane Irene Kelly, *New Commerce: Digital Branches Out – Sites + Sounds: Billboard Spotlights the Digital Music Revolution – Going Somewhere Fast – Emerging Technologies Continue to Help the Digital Market Grow*, Billboard, July 29, 2000.

43. National Association of Recording Merchandisers, *Online Music: A Strategic and Economic Analysis*, 1 NARM Research Briefs, Jan. 2000, at 7 (reporting projections of Paul Kagan Associates).

44. *See* Lee Gomes, *Entertainment World Has Flawed Crystal Ball: Conflicting Napster Predictions Evoke Errors in Foretelling Impact of VCR, Digital Tape*, Wall St. J., June 20, 2000, at B1; Anna Wilde Matthews, *Sampling Free Music over the Internet Often Leads to a Sale: Poll Adds to Conflicting Data as Recording Industry Sorts Out Web's Impact*, Wall St. J., June 15, 2000, at A3.

45. Interactive Digital Software Association, *1999 State of the Industry Report*, at 4, as supplemented by *Computer and Video Game Industry Data Updated for 2000* [hereinafter *IDSA 1999 Report*], www.idsa.com/pressroom.html (visited July 28, 2000) (citing figures from the NPD Group); *see* IDSA, *Sixty Percent of All Americans Play Video Games*, Apr. 19, 2000 (press release), www.idsa.com/releases/4_19_2000.html.

46. IDSA Press Release, *supra* note 45.

47. *See* Alex Pham, *Technology & Innovation: Game Wars*, Boston Globe, May 29, 2000, at C1 (citing figures from the NPD Group). With estimated retail sales topping more than $1.2 billion in 1999, Nintendo's hand-held portable device has more than 99% of the market. *See* Joe Hutsko, *88 Million and Counting: Nintendo Remains King of the Handheld Game Players*, N.Y. Times, Mar. 25, 2000, at C1 (citing figures from Gerard Klauer Mattison).

48. *See* Steve Alexander, *Game Time: Sega's Stunningly Successful New Dreamcast Machine Moved It from Irrelevance into Strong Competition with Industry Rivals Sony and Nintendo*,

Minn. Star Trib., Dec. 20, 1999, at 12D.

49. **Top Entertainment Console Game Publishers' Market Share (1999)**:

Publisher	**Percentage of Total Market (Unit) Share**	**Percentage of Total Market (Dollar) Share**
Nintendo	25.1	25.4
Electronic Arts	10.7	11.6
Sony	9.9	7.7
Midway	4.7	5.1
Acclaim	4.3	4.7

Information obtained from PC Data, Inc. (on file with the Commission). *See generally* www.pcdata.com.

50. **Top Entertainment PC Game Publishers' Market Share (1999)**:

Publisher	**Percentage of Total Market (Unit) Share**	**Percentage of Total Market (Dollar) Share**
Havas Interactive	16.7	15.6
Electronic Arts	13.2	14.4
Hasbro Interactive	12.7	12.4
Mattel Interactive	7.1	9.9
Infogrames Entertainment	6.2	5.7

Id.

51. Toy Manufacturers Ass'n, *National Statistics Program* (data compiled by the NPD Group); *see generally* www.toy-tma.org/industry/news/topselling/annual.html (visited Aug. 25, 2000).

52. *IDSA 1999 Report, supra* note 45, at 8.

53. *Id.* at 3. The IDSA reported that sales of video and computer games with M ratings fell from 2.6 million units in 1998 to 1.2 million in 1999. Michael White, *Sales of Video, Computer Games Rise 20%, Violent Titles Decline,* Assoc. Press, Jan. 19, 2000 (citing figures compiled by the NPD Group). But many industry analysts said that the decline was due more to the phenomenal popularity of "Pokemon" than concern over events such as Columbine. *Id.*

54. *See* www.esrb.com. The content descriptors listed under violence on the ESRB's Web site are as follows: mild animated violence, mild realistic violence, comic mischief, animated violence, realistic violence, animated blood and gore, realistic blood and gore, animated blood, and realistic blood.

55. *Id.*

56. *1999 Census Bureau Statistics, supra* note 26.

57. *IDSA 1999 Report, supra* note 45, at 3, 5.

58. *See* Pham, *supra* note 47, at C1; *see also* Dean Takahashi, *Microsoft Joins the Game: Announces Plan to Take on Nintendo, Sony and Sega with the X-Box*, The Gazette (Montreal), March 11, 2000, at C4.

59. *IDSA 1999 Report, supra* note 45, at 3.

60. *See* Marc Saltzman, *Gaming Innovation*, Toronto Star, June 15, 2000.

61. Steven Farber, *The Movie Rating Game* 2 (1972), *quoted in* Jeffrey A. Jacobs, *Comparing Regulatory Models – Self-Regulation vs. Government Regulation*, 1 J. Tech. L. & Pol'y 4 (1996). *See also* Jacobs, *supra*, at 4 (citing Richard S. Randall, *Censorship of the Movies* 67-68 (1968)) (visual nature of movies and their capacity to simulate reality give them a communicative power greater than print's; viewer is receptive and passive at the movies).

62. Richard M. Mosk, *Motion Picture Ratings in the United States*, 15 Cardozo Arts & Ent. L.J., 135 (1997). The author was the co-chairman of the Motion Picture Classification and Rating Administration. Initially, the Supreme Court upheld this government censorship, *see Mutual Film Corp. v. Indus. Comm'n*, 236 U.S. 230, 244 (1915) (exhibition of films is a business not intended to be accorded the same rights as the press), but later struck down such censorship on First Amendment grounds. *United States v. Paramount Pictures*, 334 U.S. 131, 166 (1948) (First Amendment guarantees extended to motion pictures).

63. Farber, *supra* note 61, at 5.

64. Randall, *supra* note 61, at 201. *See also* Jacob Septimus, *The MPAA Ratings System: A Regime of Private Censorship and Cultural Manipulation*, 21 Colum.-VLA J.L. & Arts 69, 71 (1996) ("For example, open mouth kissing was prohibited; a man and woman in bed, whether married or not, had to keep one leg on the floor; verbal profanity was not allowed; bad guys did not escape justice.").

65. "Since seventy percent of the nation's first-run theaters were at that time owned by the five major studios, there was little problem in securing the cooperation of exhibitors." Farber, *supra* note 61, at 6.

66. In *Paramount Pictures*, 334 U.S. at 149, the Supreme Court found that defendants Loews, Paramount Pictures, Columbia Pictures, United Artists, Universal, and American Theatres Association conspired to restrain trade, thereby eliminating competition in the exhibition and

distribution of movies. Following the ruling, the Department of Justice oversaw the divestiture of many of the studio-owned theaters.

67. *See also Burstyn v. Wilson*, 343 U.S. 495, 502 (1952) (First and Fourteenth Amendments extended free speech guarantees to film).

68. Jack Valenti, *Motion Picture Association of America, the Voluntary Movie Rating System: How It Began, Its Purpose, the Public Reaction* 1 (1996) (available in booklet form from the MPAA or on the Internet at www.mpaa.org).

69. *Id.* at 2.

70. 390 U.S. 676 (1968).

71. *Id.* at 690. In the years since the Supreme Court decided *Interstate Circuit*, the Court has decided many cases involving issues of speech and children. For a discussion of these cases and the constitutionality of governmental regulation in this area, see Appendix C (*First Amendment Issues in Public Debate over Governmental Regulation of Entertainment Media Products with Violent Content*).

72. Although the system is voluntary, all MPAA member companies – Walt Disney Company, Warner Brothers, Paramount Pictures Corporation, Universal Studios, Inc., Twentieth Century Fox Film Corporation, Sony Pictures Entertainment, and Metro-Goldwyn-Mayer, Inc. – have agreed not to distribute a film without a rating. *Rules and Regulations of the Classification and Rating Administration* Art. II § II (A), (1998). These companies have distributed approximately 80% of the major theatrical releases over the past five years. *See S&P Entertainment Industry Survey*, *supra* note 4, at 9.

The widespread adoption of MPAA's rating system and the refusal of most companies to distribute or exhibit unrated films was the subject of an unsuccessful 1970 antitrust lawsuit, *Tropic Film Corp. v. Paramount Pictures Corp.*, 319 F. Supp. 1247 (S.D.N.Y. 1970). Paramount Pictures had obtained distribution rights to the film *Tropic of Cancer* from the plaintiff, an independent producer. The film was submitted for MPAA rating and received an X. The plaintiff wished to distribute the film unrated, arguing that most theaters and newspapers would not show or advertise X-rated films, thereby severely disadvantaging such films. Paramount, an MPAA member, refused to distribute an unrated film. Tropic Film Corporation sued, alleging violations of Sections 1 and 2 of the Sherman Act and asking the court to enjoin Paramount and the MPAA from "carrying on an asserted industry-wide refusal to deal in and distribute, advertise and exhibit" *Tropic of Cancer* without an X rating. *Id.* at 1248. The court declined, stating that the rating system was "not designed to eliminate competition, but to advise motion picture exhibitors and, through them, the public, of the content of films which the Supreme Court has held that states have the constitutional right to prevent minors under seventeen from viewing." *Id.* at 1254.

73. Valenti, *supra* note 68, at 2.

74. "[W]e would now see our primary task as giving advance cautionary warnings to parents so that parents could make the decision about the moviegoing of their young children." *Id.* at 3.

75. *Id.* at 5. For a discussion of the composition and workings of MPAA's Classification and Rating Administration (CARA) see *id.* at 5-7.

76. Later raised to under 17 years of age.

77. Valenti, *supra* note 68, at 3, 9.

78. *Id.* at 3.

79. "We found early on that the M category was regarded by most parents as a sterner rating than the R category. To remedy this misconception, we changed the name from M to GP." *Id.*

80. *Id.* at 3, 7.

81. *Id.* at 8.

82. *Id.* at 4.

83. *Id.* ("The X rating over the years appeared to have taken on a surly meaning in the minds of many people, a meaning that was never intended when we created the system.").

84. *Miramax Films Corp. v. Motion Picture Ass'n*, 560 N.Y.S.2d 730 (N.Y. Sup. Ct. 1990). The court agreed that an X rating stigmatized a film:

> At its inception, the rating system denoted the various levels by the use of symbols and registered those symbols as trademarks, with the notable exception of the 'X' rating. The effect of that exception . . . has been to permit those who characterize themselves as pornographers to appropriate the 'X' rating for their own purposes. 'X rated' is now synonymous with pornography. For a film not intended for the pornography market, the rating of 'X' is a stigma that relegates the film to limited advertising, distribution and income.

Id. at 734.

85. *See, e.g.*, Amy Wallace, *Do Movie Ratings Need New Categories?*, L.A. Times, Aug. 10, 1999, at F1 ("[B]ecause an NC-17 rating is the kiss of death at the box office (movies with that rating are prohibited from advertising in many media outlets, screening in many theaters or renting in some video stores), movie studios usually contractually require directors to work with the MPAA to whittle films down to an R rating.").

86. *See Movie Rating Search*, www.cara.org/content.asp (visited May 24, 2000).

87. *See, e.g.*, Septimus, *supra* note 64, at 80 ("In 1995, the studios made a major effort to legitimize the NC-17 rating" with MGM/UA's release of the sexually explicit "Showgirls." However, the film was neither financially nor critically successful. "'Henry & June,' the only

other major-studio NC-17 release [in 1990], took in [only] $11.5 million at the box office in 1990," quoting Marc Caro, *The Heat Is On: Will NC-17 Go Legit?*, Chi. Trib., Sept. 10, 1995, at C1. No subsequent NC-17 film has been a mainstream financial and critical success.

88. A search feature available at the Web sites displays reasons (*e.g.*, language, violence, nudity, sex, and drug use) for a particular movie's rating.

89. *See* Valenti, *supra* note 68.

90. A group of influential Washington women, including Pam Howar, Susan Baker, Tipper Gore, Sally Nevius, and Ethelynn Stuckey, founded the PMRC in 1985 to promote a consumer labeling plan for music recordings that contain explicit sexual and violent references. *See* William Raspberry, *Filth on the Air*, Wash. Post, June 19, 1985, at A21.

91. The RIAA is a Washington-based trade association whose members create, manufacture, and distribute more than 90% of all sound recordings produced and sold in the United States. *See* RIAA, *Who We Are: Mission Statement*, www.riaa.com/About-Who.cfm (visited June 8, 2000).

92. Letter from PMRC to Stanley Gortikov, President, RIAA (May 31, 1985).

93. *See id.*

94. Michael Cieply, *Records May Soon Carry Warnings That Lyrics Are Morally Hazardous*, Wall St. J., July 31, 1985, at A21; Robert Hilburn, *Warnings on Labels Lauded*, L.A. Times, Aug. 10, 1985, Part 5, at 1. The PMRC further proposed that the companies: (1) print the lyrics of each song on the album cover in easy-to-read type, not obscured by design overlays; (2) regulate album covers depicting violence and explicit sexual themes by keeping such recordings behind the counter or covering them in a wrapper; (3) refrain from the use of hidden messages in songs; (4) reassess contracts with artists who glorify violence, substance abuse, or explicit sexual behavior in concerts where minors are admitted; (5) work with concert promoters to rate concerts based on an artist's lyrics and on-stage performance; and (6) work with music video producers to rate music videos based on an artist's lyrics and performance. *See* Cieply, *supra*; Ken Terry, *Diskeries to Label 'Explicit' Records*, Variety, Aug. 14, 1985, at 63, 68.

95. Letter from Stanley M. Gortikov, President, RIAA to Pam Howar, President, PMRC, Aug. 5, 1985, at 1 [hereinafter 8/5/85 Gortikov Letter]. *See also* Hilburn, *supra* note 94, Part 5, at 1; Terry, *supra* note 94, at 63.

96. 8/5/85 Gortikov Letter, *supra* note 95, at 8 (citing 25,000 songs released each year); *see also* Terry, *supra* note 94, at 63.

97. 8/5/85 Gortikov Letter, *supra* note 95, at 5-9. The industry maintained that space constraints and the competing rights of the music publisher copyright owner precluded printing lyrics on the back of albums. In addition, the RIAA stated that several of the other PMRC demands would not be possible because the recording companies do not have control over retailing practices, the production of music videos, or the promotion of concerts. *Id.; see also* Terry, *supra* note 94, at 63.

98. Letter from PMRC to Stanley W. Gortikov, President, RIAA, Aug. 7, 1985 at 1 [hereinafter 8/7/85 PMRC Letter]; *see* Stephen Holden, *Recordings Will Carry Advisory About Lyrics*, N.Y. Times, Aug. 9, 1985, at C16; *see also* Hilburn, *supra* note 94, Part 5, at 1; Terry, *supra* note 94, at 63.

99. 8/7/85 PMRC Letter, *supra* note 98, at 1.

100. *Id.*

101. *See Contents of Music and the Lyrics of Records: Hearings Before the Senate Comm. on Commerce, Science, and Transp.* [hereinafter *1985 Music and Lyrics Hearings*], 99th Cong. (Sept. 19, 1985); Michael Dolan, *"Porn Rock" Hearing Hot Ticket in D.C.*, Variety, Sept. 18, 1985, at 73; Dennis McDougal, *Zapping the Threat of Censorship*, L.A. Times, Sept. 20, 1985, Part 6, at 1.

102. *See 1985 Music and Lyrics Hearings, supra* note 101, at III; McDougal, *supra* note 101, at 1. The artists who testified were: John Denver, Frank Zappa, and Dee Snider of Twisted Sister.

103. *See 1985 Music and Lyrics Hearings, supra* note 101, at 1 (statement of Chairman John Danforth); McDougal, *supra* note 101, at 1.

104. *See 1985 Music and Lyrics Hearings, supra* note 101, at 12-13 (statement of Tipper Gore, on behalf of the PMRC); Judy Mann, *Rock and a Hard Place*, Wash. Post, Sept. 25, 1985, at C3.

105. *See* PMRC, *PMRC, PTA and RIAA Agree on Recorded Lyrics Identification*, Nov. 1, 1985 (press release) [hereinafter 11/1/85 PMRC Press Release]; Fred Goodman, *Parents, RIAA in Lyrics Accord*, Billboard, Nov. 9, 1985, at 1; Dennis Wharton, *RIAA, PMRC Reach Accord on Record Lyrics; Labels Agree to Use Stickers or Print Words*, Variety, Nov. 6, 1985, at 85.

106. *See* Richard Harrington, *Accord on Lyric Labeling: Firms, Parents Agree to 2 Warning Options*, Wash. Post, Nov. 2, 1985, at H1; Wharton, *supra*, note 105.

107. *See* Goodman, *supra* note 105; Harrington, *supra* note 106. Cassettes containing explicit language would either display the label or the statement "See LP for Lyrics." Wharton, *supra* note 105. The agreement also provided that musicians whose contracts gave them complete control over their product were not required to label or list lyrics. *See* Harrington, *supra*.

108. *See* Harrington, *supra* note 106.

109. *See* PMRC, *Results of Record Labeling Agreement*, Nov. 1, 1986, at 3-4 [hereinafter *11/1/86 PMRC Report*]; Henry Schipper, *PMRC Asks RIAA for Review of LP 'Stickering'*, Variety, Nov. 11, 1986, at 1.

110. *11/1/86 PMRC Report, supra* note 109, at 4. *See also* Dennis Wharton, *Porn Rock Foes Charge Labels Have Ignored Pact on Racy Lyrics*, Variety, Dec. 17, 1986, at 85 ("Gore last week urged the diskeries to label the objectionable records 'so you don't need a microscope to find it.'"). The PMRC also stated that independent recording companies, admittedly not part of the agreement, were not identifying explicit recordings, in spite of the fact that "more and more

major record labels have begun to distribute and market these independent releases." *11/1/86 PMRC Report, supra* note 109, at 3; *see also* Wharton, *supra*.

111. Richard Harrington, *War on Lyrics, Part 2*, Wash. Post, June 24, 1987, at D7. Among the albums cited by the PMRC were the Beastie Boys' *Licensed to Ill* and Mötley Crüe's *Girls, Girls, Girls*, along with albums by Cinderella, Poison, and Ozzy Osbourne. *See id.* The PMRC noted that most of these albums were from small independent labels, which generally were not part of the labeling agreement. *See id.*

112. At various points in 1990, bills were pending in the following states: Alaska, Arizona, Delaware, Florida, Illinois, Iowa, Kansas, Maryland, Minnesota, Missouri, Nebraska, New Mexico, New York, Oklahoma, Pennsylvania, Rhode Island, Tennessee, Virginia, and West Virginia. *See* Richard Harrington, *The New Wave of Lyrics Laws; Listening to Both Sides of the Record Labeling Debate*, Wash. Post, Jan. 28, 1990, at G1; Steve Hochman, *Record Industry Sees Tide Turning in Labeling Issue*, L.A. Times, Apr. 3, 1990, at F1; Jon Pareles, *States Drop Record-Labeling Bills*, N.Y. Times, Apr. 6, 1990, at C36; David Shribman, *State Lawmakers Tackle Issue of Song Lyrics in Debate over Rock and Role of Government*, Wall St. J., Apr. 2, 1990, at A14. Many of these bills were voluntarily withdrawn. *See* Hochman, *supra*; Pareles, *supra*; Shribman, *supra*.

113. *See* Hochman, *supra* note 112; Pareles, *supra* note 112.

114. *See* Harrington, *supra* note 112.

115. *See* Shribman, *supra* note 112.

116. *See* Jon Pareles, *Record Companies to Put Warnings on the Raw* [hereinafter *Record Companies*], N.Y. Times, Mar. 29, 1990, at C17; Jon Pareles, *As the Volume Rises in the Labeling Debate, Distortion Rules*, N.Y. Times, Apr. 1, 1990, § 2, at 1. In addition, communities in Florida and Alabama prosecuted record-store employees under city and county anti-obscenity laws for selling a stickered album – *As Nasty as They Wanna Be* by 2 Live Crew – to minors. *See* Pareles, *Record Companies, supra.*

117. *See* Pareles, *Record Companies, supra*; *see also* Ed Christman, *It's a Stick(er)y Situation at NARM*, Billboard, March 17, 1990, at 1.

118. *See* Anne L. Clark, *As Nasty as They Wanna Be*, 65 N.Y.U. L. Rev. 1481, 1490 (1990).

119. *See id.*

120. Ken Terry, *Retailers Press Labels to Adopt Uniform Stickering*, Billboard, Oct. 14, 1989, at 4.

121. *See* Christman, *supra* note 117. NARM, with over 1,100 members worldwide, is a New Jersey-based trade association for the merchandisers and distributors of music and other prerecorded entertainment software. *See Mission Statement*, www.narm.com/about/mission.htm (visited July 27, 2000). In addition, the RIAA's vice president of public relations described the RIAA's rededication to the labeling system as "trying to make our retailers happy." Pareles,

Record Companies, supra note 116.

122. *See* Terry, *supra* note 120. In addition, many retailers decided to go further than the recording industry in terms of restricting access to certain recordings. For example, some retailers adopted "18-to-purchase" policies, or refused to sell any labeled albums at all. *See* Susan Nunziata, *Record Bar Pulling 2 Live Crew Recordings from All Its Stores*, Billboard, Mar. 17, 1990, at 5; Chuck Philips, *Record Industry Unveils Warning Label*, L.A. Times, May 10, 1990, at F1. In spite of these initial efforts, many retailers dropped or modified these policies after only one year. *See* Dave DiMartino, *One Year Later, Stores Soften on '18-To-Buy'*, Billboard, Apr. 13, 1991, at 1. *See Report* Section V.C. for current retailer policies regarding the sale of stickered albums to children under 18.

123. *See* Terry, *supra* note 120.

124. Ken Terry, *Trade Unites on Self-Labeling*, Billboard, Mar. 24, 1990, at 1.

125. Richard Harrington, *Record Industry Unveils Lyrics Warning Label*, Wash. Post, May 10, 1990, at D1. *See also* RIAA, *Uniform Advisory Logo Unveiled by Recording Industry*, May 9, 1990 (press release) (on file with the Commission).

126. *See* Harrington, *supra,* note 125; Pareles, *Record Companies, supra* note 116, at C17; Chuck Philips, *Record Industry Unveils Warning Label*, L.A. Times, May 10, 1990, at F1; *Recording Industry Shows Its New Warning Label*, N.Y. Times, May 10, 1990, at C16.

127. Harrington, *supra* note 125.

128. *See* Harrington, *supra* note 125; Philips, *supra* note 126. Some have pointed out that individual labeling decisions may lead to inconsistent labeling results. *See* Jeffrey Ressner, *To Sticker or Not to Sticker*, Rolling Stone, Feb. 7, 1991, at 17. For example, while one record company may not sticker for certain profane language, another may sticker for just one use of a profane word. *See id.*

129. *See Music Lyrics and Commerce: Hearings Before the Subcomm. on Commerce, Consumer Protection, and Competitiveness of the House Comm. on Energy and Commerce*, 103d Cong. (1994). *See also* Bill Holland, *House Panel to Examine Rap*, Billboard, Feb. 19, 1994, at 1 [hereinafter Holland, *House Panel*]; Bill Holland, *Senate Hearing Examines Gangsta Lyrics*, Billboard, Mar. 5, 1994, at 10 [hereinafter Holland, *Senate Hearing*]. These hearings paralleled Congressional hearings on violence in television and video games, and occurred at a time when bills aimed at television violence and the creation of a federal ratings system for games were pending. *See* Kevin Merida, *Pop Culture Takes the Rap as Congress Battles Violence*, Wash. Post, May 10, 1994, at A1.

130. *See, e.g.*, Holland, *House Panel, supra* note 129.

131. *'Gangsta Rap' Rating System Urged*, Wash. Post, Feb. 12, 1994, at G3 (quoting Don Cornelius, founder and producer of "Soul Train"). Senator Carol Moseley Braun, for example, suggested a rating system similar to that adopted by the MPAA "to prevent certain records from

getting into the hands of children." Holland, *Senate Hearing, supra* note 129.

132. Holland, *Senate Hearing, supra* note 129.

133. Bill Holland, *Stickering Review an RIAA Priority*, Billboard, June 24, 1995. For example, Time Warner's CEO and Chairman instructed Warner Music Group to coordinate with the other recording companies "to develop guidelines for placing more specific warning labels on [potentially offensive] music." Melinda Newman, *Warner Music Seeks Input on Lyric-Labeling Standards*, Billboard, June 3, 1995.

134. Holland, *supra* note 133.

135. *See* RIAA, *RIAA Parent's Page-Parental Advisory Label Usage Guidelines for Audio and Video Product* [hereinafter *Usage Guidelines*], www.riaa.com/Parents-Advisory-6.cfm (visited July 31, 2000).

136. NARM and RIAA, *NARM, RIAA Update Retailers on Enhanced Parental Advisory Program at Industry Seminar* (March 22, 1996), www.riaa.com/News_Story.cfm?id=110 (visited July 31, 2000) (joint press release).

137. *See Usage Guidelines, supra* note 135.

138. *See* NARM and RIAA, *The RIAA Bolsters Awareness of Its Parental Advisory* (Aug. 13, 1996), www.riaa.com/News_Story.cfm?id=106 (visited July 31, 2000) (joint press release). The recording industry associations provided two types of posters. Both state, "The Parental Advisory is a notice to parents that recordings identified by this logo may contain strong language or depictions of violence, sex, or substance abuse. Parental discretion is advised." *Id.* One poster contains additional text for retailers that wish to restrict sales of stickered recordings. *See id.*

139. NARM, *Programs & Services*, www.narm.com/programs/merch/parent.htm (visited July 28, 2000); *see also* www.riaa.com/News_Story.cfm?=106 (visited July 28, 2000).

140. *See Usage Guidelines, supra* note 135.

141. *See Music Lyrics and Advisory Labels: Hearings Before the Senate Comm. on Commerce, Science and Transp.*, 105th Cong. (1998); *Music Violence: How Does it Affect Our Children?: Hearings Before the Subcomm. on Oversight of Gov't Management, Restructuring and the District of Columbia of the Senate Comm. on Gov't Affairs*, 105th Cong. (1997).

142. Bill Holland, *Senators Suggest Stricter Music Biz Labeling Policy*, Billboard, Nov. 15, 1997 (quoting Sen. Joseph Lieberman).

143. *See* Bill Holland, *Industry Groups Fight State Bills Targeting Music*, Billboard, Apr. 10, 1999; Bill Holland, *Record-Content Bills Resisted*, Billboard, Mar. 20, 1999.

144. *See* RIAA, *Recording Industry Head Upholds Value of Parental Advisory Program*, June 16, 1998 (press release) (responding to 1998 Senate hearings).

www.riaa.com/News_Story.cfm?id=90 (visited July 31, 2000).

145. *Id.*

146. *Rating Video Games: A Parent's Guide to Games: Hearings Before the Subcomm. on Juv. Just. and the Gov't Affairs Subcomm. on Reg. and Gov't Info. of the Senate Comm. on Gov't Affairs* [hereinafter *Rating Video Games*], 103d Cong. (1993), *reprinted at* 1993 WL 664394.

147. *Id.* at 11 (statement of Sen. Orrin G. Hatch), *reprinted at* 1993 WL 664409. It also would have provided an exemption from the antitrust laws for the industry to develop such standards. *Id.*

148. Jane Greenstein, *Game Makers Moving Toward Rating System*, 14 Video Bus. 1 (Jan. 7, 1994).

149. Senator Lieberman lauded the industry's intention to create a voluntary rating system, but articulated three concerns he wished to see addressed in any such system:

> First, there are questions about the system itself: who will do the rating? Will all manufacturers participate? How many age-specific ratings will there be? Will the industry spend money to inform parents about the meaning of the ratings?
>
> Second, a rating system must not be perverted into a cynical marketing ploy to attract children to more violent games. We must not allow industry to trumpet a violent rating as a selling point.
>
> Third, the industry must work to enforce whatever rating system it creates. It must consider licensing agreements and contracts which specify that ratings will be clearly visible in any advertising and understandable by parents and consumers. Distributors such as video rental stores or toy stores should face some contractual penalties from manufacturers if they sell or rent to children below the minimum ages in the ratings.

Rating Video Games, *supra* note 146, at 3-4 (statement of Sen. Joseph I. Lieberman), *reprinted at* 1993 WL 664383.

150. The Working Group also encompassed the following trade and professional organizations: Association of Shareware Professionals, Educational Software Cooperative, Shareware Trade Association and Resources, the Software Entrepreneurs Forum, and the Computer Game Developers Association. *See Rating Video Games*, *supra* note 146, at 171–72 (testimony of Mark Traphagen, Counsel, Software Publishers Association), *reprinted at* 1994 WL 394778.

151. *Id.* at 171.

152. *Id.*

153. "[P]ersonal computer software is designed for an 'open platform,' which can run software developed and published by thousands of different companies without the need for restrictive license agreements" from the platform developer. *Id.* at 172. By contrast, games for console systems must be licensed by the console manufacturers.

154. *Violence in Video Games: Hearing Before the Subcomm. on Telecomm. and Fin. of the House Comm. on Energy and Commerce*, 103d Cong. 14 (1994) [hereinafter *Violence in Video Games*] (statement of Douglas Lowenstein, President, Interactive Digital Software Association). The founding members of IDSA were Acclaim, Atari, Capcom, Crystal Dynamics, Electronic Arts, Konami, Nintendo, Philips, Sega, Sony, Viacom, and Virgin Interactive. *Id.*

155. The Working Group and the IDSA had several sources of disagreement. First, IDSA had proposed creating a software ratings board as an arm of the IDSA, but the SPA was concerned that situating the ratings board within an industry trade association would be tantamount to an "insulated" ratings system lacking objectivity and creating the appearance of favoritism to the industry. *See Rating Video Games, supra* note 146, at 172. Second, the SPA was distrustful of a ratings system potentially controlled by the video game industry, fearing that the video game industry would exercise its influence to reduce the availability or competitiveness of personal computer software. *Id.* at 172–73. Third, the SPA and IDSA harbored differences over the ratings categories, the rating structure, and the ratings process itself. *Id.* at 176.

156. *Id.* at 177 (statement of Steve Koenigsberg, President, American Amusement Machine Association), *reprinted at* 1994 WL 223121.

157. The Committee members included Electronic Arts, Acclaim, Atari, Nintendo, Philips, Sega, and the 3DO Company. *Id.* at 88 (testimony of Jack Heistand, Senior Vice President, Electronic Arts, Chairman, IDSA), *reprinted at* 1994 WL 223061.

158. *Id.* at 89.

159. *Id.*

160. *Id.* at 89–90.

161. *Id.* at 90.

162. *Id.*

163. *Id.*

164. *Id.*

165. *Id.* at 91.

166. *Id.* at 90. These sanctions could include a trademark enforcement suit with the threat of a civil penalty or a demand that a company re-sticker a product already on the market. *Id.*

167. *Violence in Video Games, supra* note 154; *Rating Video Games, supra* note 146.

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168. *Violence in Video Games, supra* note 154, at 15. In September 1994, the IDSA formed the ESRB as a separate division of the IDSA for the purpose of independently rating the content of interactive entertainment software for all platforms. Although IDSA developed the ESRB rating system (as well as the ESRB itself), it has strived to avoid any involvement in the issuance of ratings by the ESRB or in ESRB's interpretations of its rating guidelines.

Until late 1999, the IDSA was responsible for enforcing the Advertising Code of Conduct ("Adcode") and helping ESRB ensure that participating companies comply with ESRB rules and regulations. Effective January 31, 2000, the ESRB formed a separate division – the Advertising Review Council ("ARC") – to take over enforcement of the Adcode and a new set of Ad Principles. ARC Principles and Guidelines at 3.

169. *News & Info: About the Entertainment Software Rating Board*, www.esrb.org/news.html (visited July 5, 2000).

170. *Id.*

171. *See Marketing Violence to Children: Hearing Before the Senate Comm. on Commerce, Science, and Transp.* (written statement of Douglas Lowenstein, President, IDSA), 106th Cong. (1999), *reprinted at* 1999 WL 266745. The ESRB also rates "Finite Space Arenas," that is, Web sites that "allow no interaction between web site and user." Additionally, the ESRB rates "Free Space Arenas," which "provide opportunities for users to engage in an interactive experience" through "bulletin boards, chat rooms, [and play with] additional participants." *ESRBi – About the ESRBi Ratings System*, www.ersb.org/esrbi/about.html (visited August 6, 2000).

172. The Guide is available at ESRB's Web site, www.esrb.org/parent.html. ESRB also offers a brochure in English, French, and Spanish. The ESRB has also established a consumer hotline to provide ratings information in all three languages at (800) 771-ESRB (3772). The IDSA has provided retailers with supplemental material explaining the rating system.

173. Faye Fiore, *Media Violence Gets No Action from Congress*, L.A. Times, Nov. 20, 1999, at A1.

174. In addition, the ARC, created by IDSA and ESRB, has issued guidelines to govern the content of advertising. *See* IDSA, *Entertainment Software Group Creates Independent Council to Oversee Video Game Advertising*, Oct. 13, 1999 (press release), www.idsa.com/pressroom.html. *See Report* Section VI.B.

175. *Rating Video Games, supra* note 146, at 173.

176. *Id.*

177. RSAC Ratings Application, at 2.

178. A questionnaire also is submitted when applying for an ESRB rating, but an ESRB rating is largely based on the review of videotaped gameplay by three raters who have no ties to the interactive software industry.

179. The founding members of RSAC decided not to develop an age-based rating system because "not all families are the same." *Cyberporn and Children: The Scope of the Problem, The State of the Technology, and The Need for Congressional Action: Hearing Before the Senate Comm. on the Judiciary*, 104th Cong. at 93 (1995) (testimony of Stephen Balkam, Executive Director, Recreational Software Advisory Council), *reprinted at* 1995 WL 435917. According to RSAC, "[t]he FDA food labeling system was used as a model, as it provides objective and quantifiable measures of various ingredients within a product without making a judgment as to who should or should not purchase it." *Id.* at 95.

180. RSAC Ratings Specifications.

181. Both the RSAC Ratings Application and the RSAC Ratings Specifications describe how the ratings information should be displayed on software packaging and in associated retail displays. They do not set out requirements for other forms of advertising or marketing, although the company is permitted to use the rating in advertising. RSAC Ratings Application at 2, 3; RSAC Ratings Specifications.

182. Starting in April 1996, the RSAC system was redesigned for use on the Internet and launched as RSAC*i*. The RSAC*i* system is now part of and managed by the Internet Content Rating Association ("ICRA"). It has greatly expanded beyond rating electronic game sites and now provides consumers with information about the level of sex, nudity, violence, and offensive language (vulgar or hate-motivated) on a wide variety of Web sites. The RSAC*i* system has been integrated into Microsoft's browser, Internet Explorer, and MicroSystem's Cyber Patrol Software. The system currently is used on thousands of Web sites. *See* ICRA, *Internet Content Rating Association Formed to Provide Global System for Protecting Children and Free Speech on the Internet*, May 12, 1999 (press release), www.icra.org/index.htm (visited Aug. 15, 2000).

183. *See* AAMA, *Overview of the Coin-Operated Video Game Parental Advisory System*, www.coin-op.org/pas1.htm (visited Aug. 23, 2000).

184. *See History Lesson a Look at the Past Through RePlay Headlines in the News, Coin-Op History -- 1975 to 1998, Replay Magazine*, www.replaymag.com/history.htm (visited Aug. 23, 2000).

185. *See* AAMA, *Frequently Asked Questions & Answers*, www.coin-op.org/pas2.htm (visited Aug. 15, 2000).

186. *See* AAMA, *Coin-Operated Video Game Code of Conduct*, www.coin-op.org/pas3.htm (visited Aug. 15, 2000).

187. *Id.*

188. The AAMA violence descriptors are defined as follows:

Animated Violence – Mild: Contains scenes of violence involving cartoon-like characters in fantasy or life-like settings engaged in combative activity such as martial arts or sports activities with violent elements that *do not* result in bloodshed, serious injury and/or death to depicted character(s).

Animated Violence – Strong: Contains scenes of strong violence involving cartoon-like characters in fantasy or life-like settings which result in bloodshed, serious injury and/or death to the depicted character(s).

Life-Like Violence – Mild: Contains scenes of violence involving human-like characters engaged in combative activity such as martial arts or sports activities with violent elements that *do not* result in bloodshed, serious injury and/or death to the depicted character(s).

Life-Like Violence – Strong: Contains scenes of strong violence involving human-like characters which result in bloodshed, serious injury and/or death to the depicted character(s).

Sexual Content – Mild: Contains sexually suggestive references or material.

Sexual Content – Strong: Contains graphic depictions of sexual behavior and/or the human body.

Language – Mild: Contains commonly used four-letter words.

Language – Strong: Contains strong four-letter expletives.

See AMOA, *Guide to Coin-Operated Video Games*, www.amoa.com/guide.htm (visited Aug. 15, 2000).

189. The AAMA and AMOA have asked operators to obtain the necessary ratings stickers from the AAMA or AMOA, and apply them to older games. *See* AMOA, *Frequently Asked Questions*, www.amoa.com/faq.html (visited Aug. 15, 2000). According to AAMA, compliance with the stickering requirements for new games has almost reached 100%. For older games, however, compliance is lower, and the operators of the coin-op or entertainment centers, rather than the manufacturers, are responsible for placing the ratings on existing game units at the centers. The AAMA has published an extensive list of games and their respective ratings in an effort to help smaller operators properly label older games. *See* AAMA, *AAMA Game Ratings*, www.coin-op.org/aamagames.htm (visited Aug. 15, 2000). A survey conducted by a family advocacy group of 25 arcade locations in airports, hotels, malls, restaurants, and other locations in three states noted that most of the locations failed to display the Parental Advisory System label on all their games. David A. Walsh, National Institute on Media and the Family, *1999 Video and Computer Game Report Card* (released Nov. 23, 1999), www.mediaandthefamily.org/research/vgrc/1999-1.shtml (visited Aug. 15, 2000). The AAMA and AMOA jointly issued a press release critical of some of the findings of that study, and pointed to steps these groups have taken to improve industry compliance. AAMA & AMOA, *Coin-operated Interactive Entertainment Industry Statement on National Institute on Media and the Family Video and Computer Game Report Card* (Nov. 23, 1999) (joint press release) (on file with the Commission). The failure to sticker older games, nonetheless, may be especially problematic in smaller theaters, restaurants, and motels that have a few games in their lobbies or entrances.

190. *See AAMA On the Record: We're Willing to Consider More Show Consolidation*, RePlay Magazine, Oct. 1999, at 160. Generally, advertising for coin-operated games occurs in trade publications that are not usually seen by the general public. For examples of trade ads with the required color-coded disclosure of the content descriptors, *see* RePlay Magazine, June 2000, at 5 and back cover.

191. AAMA, *AAMA Report to Congress: A Report on the Industry's Pilot Study on Implementation of Access-Limiting Measures Under the Coin-Operated Video Game Parental Advisory System* 26 (1998) (submitted to Senators Herbert Kohl and Joseph Lieberman) (on file with the Commission).

192. *Hearing on Impact of Media Violence on Kids Before the Sen. Comm. on Commerce, Science, and Transp.*, 106th Cong. (2000) (testimony of Danielle Shimotakahara), *reprinted at* 2000 WL 350139. Ms. Shimotakahara is a 12-year-old student circulating a petition asking for the removal of violent coin-operated video games from retail locations where children "hang out," such as pizza parlors, bowling alleys, and skating rinks. *Id.*

193. *See* Catherine Hinman, *Disney Decides to Toss Violent Video Games*, Sun-Sentinel, May 17, 1999, at B6; Clark, *supra* note 118.

194. *Peterson Signs Violent Video Games Ordinance into Law* (July 17, 2000) (press release), www.indygov.org/mayor/press/2000/vvg_law.htm (visited Aug. 9, 2000).

Appendix E

ENTERTAINMENT INDUSTRY INFORMATION REQUESTS

To prepare this Report, the Commission obtained information from 61 members of the motion picture, music recording, and electronic game industries. After receiving the required clearance from the Office of Management and Budget under the Paperwork Reduction Act,[1] the Commission first solicited information from nine major motion picture studios, five major music recording companies, and eleven major publishers of computer and video games about these companies' use of their industries' rating or labeling systems and their marketing practices for rated or explicit-content labeled products. *See infra* Sample Letter A, at 3 (Sample Motion Picture Studio Letter); Sample Letter B, at 13 (Sample Recording Company Letter); Sample Letter C, at 24 (Sample Electronic Game Company Letter). The companies almost uniformly certified that the information they produced in response to these requests was complete. The Commission also obtained information from other entertainment industry members, such as eight major theater chains and 14 major retailers of movies, music, and games. *See* Sample Letter D, at 34 (Sample Theater Owner Letter) and Sample Letter E, at 41 (Sample Retailer Letter).

In total, the Commission received information from the following companies:

(1) *Movie Studios and Theaters*:

> American Multi-Cinema, Inc.; Carmike Cinemas, Inc.; Cinemark USA, Inc.; GC Companies, Inc.; Loews Cineplex Entertainment Corp.; Metro-Goldwyn-Mayer Studios, Inc.; National Amusements, Inc.; Paramount Pictures; Sony Pictures Entertainment; Regal Cinemas; Time Warner Entertainment Company, L.P., (including its independently managed divisions Warner Bros. and New Line Cinema); Twentieth Century Fox Film Corp.; United Artists Theatre Circuit, Inc.; Universal Studios, Inc.; and The Walt Disney Company (including its separately operated subsidiary Miramax Film Corp.).

(2) *Music Recording Companies*:

> BMG Entertainment; EMI Recorded Music, North America; Sony Music Entertainment, Inc.; UMG Recordings, Inc.; and Warner Music Group, Inc.

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[1] Under certain circumstances, the Paperwork Reduction Act requires public comment periods before an agency can collect information from the public. The Commission published Federal Register notices seeking public comment regarding this collection of information on August 25, 1999 (with a 60-day comment period) and on November 18, 2000 (with a 30-day comment period). *See* 64 Fed. Reg. 46,392 and 64 Fed. Reg. 63,045 (1999).

(3) *Electronic Games Designers and Producers*:

> Acclaim Entertainment, Inc.; Activision, Inc.; Apogee Software, Ltd.; Capcom Entertainment, Inc.; Eidos Interactive, Inc.; Electronic Arts, Inc.; GT Interactive Software Corp. (now Infogrames, Inc.); Id Software, Inc.; Interplay Entertainment Corp.; Konami of America, Inc.; Midway Games, Inc.; Sega Companies (Sega of America, Inc., Sega Enterprises, Inc., & SegaSoft Networks, Inc.); and Sierra On-Line, Inc.

(4) *Retailers*:

> Amazon.com, Inc.; Babbage's Etc.; Best Buy Co., Inc.; Blockbuster Video; CDNow, Inc.; Electronic Boutique Holdings Corp.; eToys, Inc.; Hollywood Entertainment Corp.; MTS, Inc. (Tower Records/Video/Books); Musicland Group, Inc.; Target Stores, Inc.; Toys "R" Us, Inc.; Trans World Entertainment Corp.; and Wal-Mart Stores, Inc.

(5) *Media Outlets*:

> Black Entertainment Television, Inc.; Channel One Network; and MTV Networks.

In addition, FTC staff met and corresponded with: the Motion Picture Association of America; the National Association of Theatre Owners; the Recording Industry Association of America; the National Association of Recording Merchandisers; the Entertainment Software Rating Board; the Video Software Dealers Association; the Interactive Digital Software Association; the Internet Content Rating Association; the Software and Information Industry Association; the Interactive Entertainment Merchants Association; and the American Amusement Machine Association.

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

Bureau of Consumer Protection

[Sample A - Motion Picture Studio Letter]

[Company or counsel name and address]

Re: Study of the Marketing of Violent Entertainment to Children
Matter No. P994511

Dear **[company official or counsel]**:

As you are aware, the Federal Trade Commission is conducting a study of the marketing practices of the motion picture, music recording, and video and personal computer game industries. The purpose of this inquiry is to determine, among other things, how entertainment materials determined by industry to warrant a parental advisory or to be inappropriate for certain age groups because of their violent content are being marketed, and specifically whether they are being marketed to children. This inquiry is undertaken pursuant to the provisions of Section 6 of the FTC Act, 15 U.S.C. § 46. To prepare its report, the Commission is examining (1) the voluntary rating or labeling systems used by members of each industry, and (2) the practices of industry members in marketing such violent materials.

We appreciate the cooperation and willingness to provide materials needed for this study that you have expressed. Attached is the Commission's request for information from **[company name]**. We have set two response dates by which to provide the requested information. We ask that you provide the material responsive to the first group of requests by February 2, 2000. These requests seek information about the company and information about the marketing of specific motion pictures that have been rated by the Classification and Rating Administration as R or PG-13 due to their violent content. We request production of material responsive to the remaining requests by February 23. These requests seek additional information on specific motion pictures as well as more general information concerning company advertising and marketing policies.

Any materials that you submit that constitute trade secrets or privileged or confidential commercial or financial information within the meaning of Section 6(f) of the Federal Trade Commission Act, 15 U.S.C. § 46(f), are subject to that provision's constraints on public disclosure. In addition, documents submitted in response to this request that are marked as confidential will not be disclosed without first giving you ten days' notice of the Commission's intention to do so, except as provided in Sections 6(f) and 21 of the FTC Act, 15 U.S.C. §§ 46(f) and 57b-2, and the applicable Commission Rules.

In addition to the material requested, we would be happy to consider any other additional information you believe we should include in our review. Please note that, although an effort has been made to be as comprehensive as possible, the attached requests are not to be construed as all-inclusive. To complete our report we may request additional documents or information.

Thank you again for your cooperation. If you have any questions about the request or would like to discuss the matter, please feel free to call me at 202-326-####.

Very truly yours,

[Counsel for the FTC]

[Sample Motion Picture Studio Information Requests]

REQUEST FOR INFORMATION

Instructions for Preparing Responses

1. Each request below seeks information or documents within the possession, custody, or control of **[company name]**, as well as any other person (including, without limitation, attorneys, agents, accountants, advertising agencies and advisors) acting or purporting to act on **[company name]**'s behalf. "Document(s)" means the original (or, in lieu thereof, any exact copy), and all non-identical copies (whether different from originals by reason of notations made on such copies or otherwise) of all written, recorded, transcribed, punched, taped, filmed or graphic matter, however produced or reproduced, including, but not limited to, letters, contracts, correspondence, complaints, focus group reports, advertising material, and computer printouts. It also includes electronic mail.

2. "You," "your company" means **[company name]**, all parents, subsidiaries and affiliates, as well as any d/b/a that [company name] uses to market or distribute motion pictures.

3. "And" as well as "or" shall be construed both conjunctively and disjunctively, as necessary, in order to bring within the scope of the particular request all documents that otherwise might be construed to be outside its scope. "Any" and "all" mean each and every.

4. If, for any request, there are documents that would be responsive to this request, but were destroyed, mislaid, or transferred, describe the circumstances and date on which they were destroyed, mislaid, or transferred.

5. Each document not subject to a claim of privilege shall be submitted in its entirety even if only a portion of that document relates to the request. This means that the document shall not be edited, cut or expunged and shall include all appendices, tables or other attachments.

6. If any requested document or statement is the subject of a claim of privilege or is otherwise withheld, the claim must be asserted or the reason for withholding stated no later than the date set for production of the information for each document withheld. A claim of privilege shall include:

    a. the type, title, specific subject matter and date of the document;

    b. the requests to which the document is responsive;

    c. the objection to production and the reasons for the objection; and

    d. the names, addresses and positions of each author and recipient of the document.

7. Please identify each request for which the document is responsive. Documents that may be responsive to more than one request need not be submitted more than once.

8. Please stamp each page of each responsive document submitted with a "Bates" number, provide an index to the documents, and provide two sets of such materials.

9. Several terms are defined in the individual requests. Please use those definitions for responding to all of the requests.

10. Your submission must be dated and signed by an officer authorized to do so on the company's behalf, certifying that, to the best of the signer's knowledge, information, and belief, formed after a reasonable inquiry, the submission is complete and correct as of the time it is made. Under 18 U.S.C. § 1001, anyone who knowingly and willfully makes false statements or representations to a United States government agency is subject to fines and/or imprisonment.

Responses to Requests 1-6 should be provided no later than February 2, 2000.

COMPANY INFORMATION

Please provide:

1. The full name and address of your company and of any parent, subsidiary or affiliated companies.

2. A current organizational chart identifying the various departments and organizations within **[company name]** and a detailed description of the various responsibilities of each department or organization involved in advertising, marketing or distributing motion pictures for either theatrical release or home video.

3. The web addresses for all sites operated, authorized, registered, owned or sanctioned by **[company name]** to promote, make available for viewing or sell one or more of its motion pictures, or to market products based on its motion pictures.

FILM SPECIFIC INFORMATION: MARKETING PLANS

Please provide:

4. All marketing plans[1] for the following motion pictures:

   [list of motion pictures]

FILM SPECIFIC INFORMATION: OTHER MARKETING MATERIALS

To the extent they are not included in the information provided in response to the previous Request, provide the following material regarding the above listed motion pictures:

5. All materials, including but not limited to, trailers, pressbooks, radio and tv ads, submitted to the Motion Picture Association of America's ("MPAA") Advertising Administration for approval.

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[1] "Marketing plan" includes advertising and marketing objectives and strategies, themes, or concepts, as well as media recommendations, media plans, marketing reports, business studies, creative strategies or briefs, and any other documents that set out, describe, or discuss the planned or actual approaches for marketing, advertising, or promoting motion pictures, whether created by the company or by its agents, including but not limited to ad agencies, media buyers, or advertising consultants.

6. Each different advertisement,[2] and a detailed description of each promotion,[3] used by **[company name]** for the above listed motion pictures and a dissemination schedule for each different newspaper, periodical, Internet, radio and television advertisement.

Responses to the remaining Requests should be provided no later than February 23, 2000.

7. All demographic data on the viewing or listening audiences for each different advertisement or promotion provided in response to Request No. 6 above.

8. All correspondence[4] between **[company name]** and the MPAA's Advertising Administration regarding the approval of any advertising for the above listed motion pictures and any other documents referring or relating to that correspondence.

9. All documents referring or relating to results or information (including demographic information) gathered by pre-tests, sneak previews, or exit polls, including all questions asked and results.

10. All documents (including documents of **[company name]**, its advertising agencies, media buyers, marketing consultants, licensors or licensees) referring or relating to the age or ages of the target and actual audience(s) for the above listed motion pictures, both for theatrical release and home video.

11. All studies, surveys, focus group reports, copy tests or other research referring or relating to any of the motion pictures listed above, or to a proposed, planned or actual advertisement or promotion for those films.

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[2] "Advertisement" or "advertising" shall mean any written or verbal statement, illustration or depiction, or other material that is designed, directly or indirectly, to create interest in, promote, or affect the sale of goods or services, appearing in any medium, including but not limited to brochures, newspapers, magazines, pamphlets, leaflets, circulars, mailers, book inserts, mousepads, free standing inserts, letters, catalogues, recording singles, music videos, demos, album cover art provided to retailers or other recording industry members, posters, stickers, tattoos, festival handouts, charts, billboards, public transit cards, point of purchase displays, package inserts, package labels, films, slides, radio, television, or cable television, on-line, electronic, or Internet messages or images, audio programs transmitted over a telephone system, or program-length commercials ("infomercial"). It also includes co-op advertising and any other advertising or promotion done with any third party.

[3] "Promotion" shall mean any activity or event that is designed, directly or indirectly, to create interest in, or affect the sale of, goods or services, including but not limited to celebrity appearances, endorsements, and/or performances.

[4] "Correspondence" includes all mail sent or received by you, regardless of whether that mail received a response. It also includes all electronic mail.

12. Any business study or other report generated prior to or during production regarding market potential as well as all documents discussing those studies or reports.

13. All agreements by which **[company name]** has licensed the name, images or characters for any of the above listed motion pictures for other uses, such as toys, action figures, video games, television shows, or soundtracks. Please also provide all documents regarding **[company name]**'s involvement in, approval of, or clearance of any advertising or promotional efforts by licensees marketing those products.

14. A list of each product placement (an appearance or mention of the trademark, product name or product) of the above listed motion pictures in any radio or television program or any video game.

15. The name and address of each advertising agency, media buyer or consultant, however denominated, used by **[company name]** in the planning, preparation or dissemination of its advertising or promotion.

16. The date of home video release (if applicable) and gross sales data, in terms of both dollars and actual copies sold.

FILM SPECIFIC INFORMATION: TRAILERS

Provide the following material regarding trailers for the above listed motion pictures:

17. All correspondence with or reports from the MPAA's Advertising Administration regarding trailers for the above films, whether those trailers were ultimately used or not, and any documents referring or relating to those reports or correspondence.

18. All documents referring or relating to contacts with exhibitors about trailers for the above films.

19. Any contract or addendum to a contract with an exhibitor referring or relating to a trailer for any of the above films.

20. All results or information gathered by pre-tests or pre-screenings for any trailers for the above films, whether those trailers were ultimately used or not.

21. The name and address of each company used in creating, tracking or distributing a trailer. Please also provide any instructions given by **[company name]** to any of the companies identified in this request.

22. A list of all films for which the trailer for any of the above films were "attached."

23. All documents referring or relating to results of any trailer tracking or checking service commissioned by **[company name]**.

24. A list of all films for which **[company name]** requested an exhibitor to play a trailer for any of the above films and any documents referring or relating to those attempts.

25. A list of all home videos for which **[company name]** attached trailers for the above films. Please also provide gross sales and rental data for those home videos.

26. For any of the above films released on home video, a schedule of all trailers attached to that home video.

FILM SPECIFIC INFORMATION: SELF-REGULATORY SYSTEM

Please provide the following material regarding the operation of the industry self-regulatory system and the above listed motion pictures:

27. All correspondence between **[company name]** and the Classification and Rating Administration ("CARA") regarding the above listed motion pictures and all internal documents referring or relating to those contacts with CARA.

28. All documents referring or relating to any contract provision requiring any of the above listed motion pictures to receive a particular rating or a rating no more restrictive than R or PG-13.

INFORMATION RELATED TO MARKETING AND RATING OF MOTION PICTURES IN GENERAL

Please provide the following information. The time period for these requests is from January 1, 1997 to the present.

29. A detailed description of **[company name]**'s policies, procedures or guidelines for advertising or promoting a motion picture for theatrical release. Describe any differences that may exist in that process when the company advertises films rated PG versus PG-13. Describe also any differences in that process when the company advertises films rated R versus PG-13. Include copies of any written standards, guidelines or policies of the company on how it advertises or promotes films to the public, including any training materials for personnel that refer or relate to those policies.

30. A detailed description of **[company name]**'s policies, procedures or guidelines for marketing a motion picture for home video release. Include in that statement a description of any distinctions between marketing for home video versus marketing for theatrical release.

31. All documents referring or relating to the policies or practices of any television station, radio station, publication, or Internet medium, for accepting advertisements for motion

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pictures rated PG-13 or R.

32. A detailed description of any steps taken by **[company name]** to identify the ages of the persons visiting web sites identified in response to Request No. 3 above.

33. All documents referring or relating to the ages of persons accessing the above web sites and web pages or the appeal of those web sites and web pages to children under 17.

34. A detailed statement describing **[company name]**'s participation on the "Advertising/Publicity Committee" with other members of the MPAA. In that description, please state the primary purpose of the Advertising/Publicity Committee and identify your personnel on the Committee. Please include the minutes of all Committee meetings and any documents referring or relating to issues discussed or to be discussed at Committee meetings.

35. A detailed description of the steps taken by **[company name]** to encourage retailers to consider the rating of a motion picture in its decisions of whether to stock, display, advertise, promote, make available for in-store (or on-line) viewing, or sell home videos.

COMPLAINT AND INQUIRIES

Please provide the following information. The time period for these requests is from January 1, 1997 to the present.

36. All documents, including but not limited to, correspondence between **[company name]** and any exhibitor, referring or relating to the compatibility of any trailer with a particular motion picture.

37. All complaints or inquiries and any responses thereto that relate to the rating, advertising, or marketing of PG-13 or R rated films (if rated as such due to violent content), and any other documents referring or relating to such complaints.

38. A detailed description of the procedures **[company name]** uses when it receives a complaint on the issues described in the preceding request.

RESEARCH AND ANALYSIS REGARDING FILM PREFERENCES

Please provide the following information. The time period for these requests is from January 1, 1997 to the present.

39. All studies, surveys, data, focus group reports, copy tests, or other research referring or related to:
    a) the film preferences of children under 17; and
    b) the marketing or advertising of R rated films to persons under 17 or PG-13 rated films to persons under 13.

40. All studies, surveys, data, focus group reports, copy tests, or other research referring or related to the demographics of film patrons, including, but not limited to, information concerning the percentage of film patrons that children under 17 comprise.

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

Bureau of Consumer Protection

[Sample B - Recording Company Letter]

[Company or counsel name and address]

Re: Study of the Marketing of Violent Entertainment to Children
Matter No. P994511

Dear **[company official or counsel]**:

As you are aware, the Federal Trade Commission is conducting a study of the marketing practices of the motion picture, music recording, and video and personal computer game industries. The purpose of this inquiry is to determine, among other things, how entertainment materials determined by industry to warrant a parental advisory or to be inappropriate for certain age groups because of their violent content are being marketed, and specifically whether they are being marketed to children. This inquiry is undertaken pursuant to the provisions of Section 6 of the FTC Act, 15 U.S.C. § 46. To prepare its report, the Commission is examining (1) the voluntary rating or labeling systems used by members of each industry, and (2) the practices of industry members in marketing such violent materials.

We appreciate the cooperation and willingness to provide materials needed for this study that **[company name]** has expressed. Attached is the Commission's request for information from **[company name]**. We have set two response dates by which to provide the requested information. We ask that you provide the material responsive to the first group of requests by February 2, 2000. These requests seek information about the company and particular recordings and the advertisements, dissemination schedules, marketing materials, and sales data for those particular recordings. We request production of material responsive to the remaining requests by February 23. These requests seek additional information concerning the company's labeling, advertising, and marketing policies.

Any materials that you submit that constitute trade secrets or privileged or confidential commercial or financial information within the meaning of Section 6(f) of the Federal Trade Commission Act, 15 U.S.C. § 46(f), are subject to that provision's constraints on public disclosure. In addition, documents submitted in response to this request that are marked as confidential will not be disclosed without first giving you ten days' notice of the Commission's intention to do so, except as provided in Sections 6(f) and 21 of the FTC Act, 15 U.S.C. §§ 46(f) and 57b-2, and the applicable Commission Rules.

In addition to the material requested, we would be happy to consider any other additional information you believe we should include in our review. Please note that, although an effort has been made to be as comprehensive as possible, the attached requests are not to be construed as all-inclusive. To complete our report we may request additional documents or information.

Thank you again for your cooperation. If you have any questions about the request or would like to discuss the matter, please feel free to call me at 202-326-####.

Very truly yours,

[Counsel for the FTC]

[Sample Recording Company Information Requests]

REQUEST FOR INFORMATION

Instructions for Preparing Responses

1. Each request below seeks information or documents within the possession, custody, or control of **[company name]**, as well as any other person (including, without limitation, attorneys, agents, accountants, advertising agencies, and advisors) acting or purporting to act on **[company name]**'s behalf. "Document(s)" means the original (or, in lieu thereof, any exact copy) and all non-identical copies (whether different from originals by reason of notations made on such copies or otherwise) of all written, recorded, transcribed, punched, taped, filmed, or graphic matter, however produced or reproduced, including, but not limited to, letters, contracts, correspondence, complaints, focus group reports, advertising material, and computer printouts. It also includes electronic mail.

2. "**[Company name]**," "you," or "your company" as used throughout the requests includes **[company name]**, all subsidiaries and affiliates, as well as any of the labels that **[company name]** owns, partially owns, has control over, is affiliated with, or arranges distribution for, including but not limited to **[names of record labels]**.

3. "And" as well as "or" shall be construed both conjunctively and disjunctively, as necessary, in order to bring within the scope of the particular request all documents that otherwise might be construed to be outside its scope. "Any" and "all" mean each and every.

4. If, for any request, there are documents that would be responsive to this request, but which were destroyed, mislaid, or transferred, describe the circumstances and date on which they were destroyed, mislaid, or transferred.

5. Each document not subject to a claim of privilege shall be submitted in its entirety even if only a portion of that document relates to the request. This means that the document shall not be edited, cut, or expunged and shall include all appendices, tables, or other attachments.

6. If any requested document or statement is the subject of a claim of privilege or is otherwise withheld, the claim must be asserted or the reason for withholding stated no later than the date set for production of the information for each document withheld. A claim of privilege shall include:

    a. the type, title, specific subject matter, and date of the document;

    b. the requests to which the document is responsive;

    c. the objection to production and the reasons for the objection; and

    d. the names, addresses, and positions of each author and recipient of the document.

7. Please identify each request to which a document is responsive. Documents that may be responsive to more than one request need not be submitted more than once.

8. Please stamp each page of each responsive document submitted with a "Bates" number, provide an index to the documents, and provide two sets of such materials.

9. Several terms are defined in the individual requests. Please use those definitions for responding to all of the requests.

10. Your submission must be dated and signed by an officer authorized to do so on your company's behalf, certifying that, to the best of the signer's knowledge, information, and belief, formed after a reasonable inquiry, the submission is complete and correct as of the time it is made. Under 18 U.S.C. § 1001, anyone who knowingly and willfully makes false statements or representations to a United States government agency is subject to fines and/or imprisonment.

Responses to Requests 1-8 should be provided no later than February 2, 2000.

Please provide:

Company Information

1. The full name and address of your company and of any parent, subsidiary company, or affiliated company.

2. A current organizational chart for **[company name]** identifying the various departments and organizations within **[company name]**, and for each of the record labels that **[company name]** owns, partially owns, or controls, or for which **[company name]** has distributed recordings. Please also provide a detailed description of the responsibilities of each department or organization involved in the advertising, marketing, and stickering with the Explicit Content Parental Advisory Label ("PAL") of **[company name]**'s recordings or music videos.

3. The web address for all sites operated, authorized, registered, owned, or sanctioned by **[company name]**, or any affiliated record labels or artist web sites, to promote, make available for play, download, or sell its recordings, demos for those recordings, music videos, and/or demos of the videos.

Information For Specific Recordings: Marketing Information

Please provide:

4. A list of the ten best selling albums (full-length CD's) stickered[1] in whole or in part due to violent content in 1999. Please indicate if both an explicit and an edited version of the recording are available for purchase (together "Request No. 4 recordings") and provide a copy of the recording and lyrics for each version.

5. If not provided in response to Request No. 4, indicate if each of the following recordings was stickered in whole or in part due to violent content:

   [list of explicit-content labeled recordings]

   If any of the above recordings was stickered in whole or in part due to violent content, indicate if both an explicit and an edited version of the recording is available for purchase (together "Request No. 5 recordings") and provide a copy of the recording and lyrics for each version.

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[1] "Stickered" recordings are all recordings that have been labeled with an Explicit Content Parental Advisory Label.

6. State all reason(s) why (language, sexual or violent content, or references to drug use) the explicit version of each Request No. 4 recording and each Request No. 5 recording are stickered.

7. For each Request No. 4 recording and Request No. 5 recording (both the explicit and edited versions), provide:

   a. each different advertisement[2] and a detailed description of each different promotion used in the United States.[3]

   b. a dissemination schedule for each different television, radio, magazine, newspaper, or Internet advertisement provided in response to Request No. 7a; and

   c. all marketing plans.[4]

8. The total unit and dollar sales in the United States for each Request No. 4 recording and Request No. 5 recording.

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[2] "Advertisement" or "advertising" shall mean any written or verbal statement, illustration or depiction, or other material that is designed, directly or indirectly, to create interest in, promote, or affect the sale of goods or services, appearing in any medium, including but not limited to brochures, newspapers, magazines, pamphlets, leaflets, circulars, mailers, book inserts, mousepads, free standing inserts, letters, catalogues, recording singles, music videos, demos, album cover art provided to retailers or other recording industry members, posters, stickers, tattoos, festival handouts, charts, billboards, public transit cards, point of purchase displays, package inserts, package labels, films, slides, radio, television, or cable television, on-line, electronic, or Internet messages or images, audio programs transmitted over a telephone system, or program-length commercials ("infomercial"). It also includes co-op advertising and any other advertising or promotion done with any third party.

[3] "Promotion" shall mean any activity or event that is designed, directly or indirectly, to create interest in, or affect, the sale of goods or services, including but not limited to artist appearances, endorsements, and/or concert tours or performances.

[4] "Marketing Plan" includes advertising and marketing objectives and strategies, themes, or concepts, as well as media recommendations, media plans, marketing reports, business studies, creative strategies or briefs, and any other documents that set out, describe, or discuss the planned or actual approaches for marketing, advertising, or promoting recordings or recording artists, whether created by the company or by its agents, including but not limited to ad agencies, media buyers, or advertising consultants.

Responses to the remaining Requests should be provided no later than February 23, 2000.

Please provide:

Parental Advisory Label

9. A detailed description of the process that **[company name]** has followed, and the personnel involved, since January 1, 1998 to determine whether a recording should *receive* the PAL. Please also provide:

   a. all policies, guidelines, or criteria used in determining whether a recording should *receive* the PAL.

   b. a list of the affiliated record labels or other companies that use the same process and the personnel involved at these companies. If this process varies by affiliated record label or other company, please describe the process that each such company follows.

   c. any plans or proposals to modify the parental advisory labeling system, including the process by which you decide to sticker a recording.

   If the process has changed during this period, please describe such changes and the date of such changes.

10. A detailed description of the process that **[company name]** has followed, and the personnel involved, since January 1, 1998 to determine the *format, appearance, and placement* of the PAL on a particular recording, including instructions as to the design, size, or attachment of the PAL on the recording. Please also provide:

    a. all policies, guidelines, or criteria used in determining the format, appearance, and placement of the PAL.

    b. a list of the affiliated record labels or other companies that use the same process and the personnel involved at these companies. If this process varies by affiliated record label or other company, please describe the process that each such company follows.

    If the process has changed during this period, please describe such changes.

11. A list of all of **[company name]**'s stickered recordings sold in the United States during 1998 and 1999, organized by year, including the name of the recording, the recording artist, and the record label(s) involved. Please designate those stickered in whole or in part due to violent content.

12. A detailed description of the method by which **[company name]** determined, or affiliated record labels or other companies determined, and the personnel involved in determining, which recordings to list in response to Request No. 4 and whether the recordings listed in Request No. 5 were stickered in whole or in part due to violent content.

13. All documents received from the Recording Industry Association of America, the National Association of Recording Merchandisers, or other recording industry members[5] since January 1, 1995 referring or relating to: how the decision to sticker recordings with explicit content is made, how the PAL should appear (the design and placement) on a recording package, how the PAL should be applied/affixed to a recording, and whether the PAL should appear in advertising or marketing materials for the recording.

14. A detailed description of any steps **[company name]** has taken since January 1, 1997 to educate the public about any part of the parental advisory labeling system. Please provide any surveys, studies, focus group reports, or other research conducted since January 1, 1997 discussing or evaluating any such educational efforts.

Advertising and Marketing

15. A detailed description of **[company name]**'s policies, procedures, or guidelines for advertising or marketing a recording, including the approval and review process used, since January 1, 1998. Please also provide:

    a. a description of any differences in that process when **[company name]** advertises or markets a stickered recording or the edited version of a stickered recording.

    b. a list of the affiliated record labels or other companies that use the same process during this time period. If this process varies by affiliated record label or other company, please provide all relevant information for each label or company.

    c. all written policies, procedures, or guidelines, including employee training materials, referring or relating to those policies.

16. A detailed description of whether and in what circumstances since January 1, 1998 **[company name]** (or any affiliated record label or other company) has advertised or marketed a recording containing explicit content without displaying the PAL, or without stating that the recording contained explicit content, in any advertisement or promotion for that recording.

17. A detailed description of the process that **[company name]** has used since January 1, 1998 to decide whether to produce, advertise, or promote an edited version of a stickered recording. Please also describe the process that affiliated record labels or other companies use, if different. If the process has changed during this period, please describe such changes.

18. For recordings for which **[company name]** has advertised both an explicit and an edited version, provide a detailed description of how the advertising or promotion for the explicit and edited versions has differed since January 1, 1999 (e.g., does **[company name]**

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[5] "Industry member" means all members of the recording industry, including record labels, distributors, retailers, or recording industry associations.

provide retailers with cover art for both versions?).

19. All documents since January 1, 1997 referring or relating to the policies or practices of any publication, broadcast or cable company, or Internet media for accepting advertisements for recordings or music videos that are stickered or that contain violent content.

20. All demographic data on the viewing or listening audiences for each different advertisement or promotion provided in response to Request No. 7a above.

21. To the extent not provided in response to Request No. 7, all documents, including documents by **[company name]**, its advertising agencies, media buyers, marketing consultants, licensors or licensees, since January 1, 1998 referring or relating to the demographics of the target and actual audiences for each of the Request No. 4 recordings and Request No. 5 recordings (and for the artists involved in these recordings).

22. The name and address of each advertising agency, media buyer, or other consultant, however denominated, used by **[company name]** in the planning, preparation, or dissemination of each advertisement or promotion provided in response to Request No. 7a above.

23. All agreements by which **[company name]** has licensed stickered albums, stickered singles, or music videos from such recordings, for other uses in 1998 and 1999, including in other products such as video games, television programs, motion pictures, or their soundtracks. Please also provide all documents regarding **[company name]**'s involvement in, approval of, or clearance of any advertising or promotional efforts by licensees marketing those recordings or music videos.

24. A list of each product placement (an appearance or mention of the recording or music video provided in response to Request No. 23 above) by the name of the recording or music video, and the name, date, and time of the production's first airing.

25. All documents referring or relating to **[company name]**'s policies or practices during 1998 and 1999 to encourage or discourage the purchase of, download of, or access to (e.g., listening stations in record stores or availability on the Internet) stickered recordings to children under 18.

26. A detailed description of the steps taken by **[company name]** to encourage retailers to use or consider the parental advisory labeling system in decisions whether to stock, display, advertise, promote, make available for in-store (or on-line) listening, or sell stickered recordings.

27. All marketing plans for **[non-explicit content recording]**.

Internet

28. To the extent not already provided, all documents since January 1, 1998 referring or

relating to **[company name]**'s policies or practices regarding the *advertising or promotion* of stickered recordings on the Internet. Please also list the affiliated record labels or other companies that have used the same policies or practices during this time period. If these policies or practices vary by affiliated record label or company, please provide all relevant information for each label or company. If the policies or practices have changed during this period, please describe such changes.

29. All documents since January 1, 1998 referring or relating to **[company name]**'s policies and practices regarding making stickered recordings available for *listening or purchase* on the Internet, including any limitations placed on the age of those who can listen to, download, or buy such recordings. Please include all documents referring or relating to efforts to enforce any such limitations. Please also list the affiliated record labels or other companies that have used the same policies or practices during this time period. If these policies or practices vary by affiliated record label or company, please provide all relevant information for each label or company. If the policies or practices have changed during this period, please describe such changes.

30. A detailed description of any steps taken by **[company name]** to identify the ages of persons visiting the web sites identified in response to Request No. 3 above.

31. All documents referring or relating to the demographics of persons accessing the web sites identified in response to Request No. 3 above or the appeal of those web sites and web pages to children under 18.

Sales and Popularity of Recordings

32. The unit and dollar sales of all **[company name]** recordings sold in the United States, by year and genre, for 1998 and 1999.

33. The unit and dollar sales of all **[company name]** stickered recordings (and the unit and dollar sales of any edited versions of these recordings) sold in the United States, by year and genre, for 1998 and 1999. Please also provide the unit and dollar sales of **[company name]** recordings stickered in whole or in part due to violent content sold in the United States, by year, for 1998 and 1999.

34. To the extent not already provided, all documents referring or relating to the sales of each Request No. 4 recording and Request No. 5 recording to children under 18.

Complaints and Inquiries

35. All complaints or inquiries, and any responses thereto, since January 1, 1997 that **[company name]** has received that relate to the violent content of any recording, the advertising or marketing of stickered recordings, the failure to sticker recordings as containing explicit content, or the appeal of advertisements or stickered recordings to children under 18.

36. A detailed description of the process **[company name]** has followed since January 1, 1997 when responding to complaints or inquiries on the issues described in Request No. 35 above.

Research and Analysis

37. All studies, surveys, data, focus group reports, copytests, or other research conducted since January 1, 1997 referring or relating to:

    a. the music buying or listening preferences of children under 18;

    b. the marketing or advertising of stickered recordings to children under 18;

    c. the parental advisory labeling system, including consumer awareness of, understanding of, use of, or satisfaction with that system; or

    d. the violent content in recordings or music videos.

38. All studies, surveys, data, focus group reports, copytests, or other research conducted since January 1, 1997 referring or relating to the advertising, marketing, sale, or availability of stickered recordings on the Internet.

39. All studies, surveys, data, focus group reports, copytests, or other research referring or relating to any of the Request No. 4 recordings or Request No. 5 recordings or to any planned or actual advertisements for any of these recordings regardless of the date or author of the research, report, or study.

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

Bureau of Consumer Protection

[Sample C - Electronic Game Company Letter]

[Company or counsel name and address]

Re: Study of the Marketing of Violent Entertainment to Children
Matter No. P994511

Dear **[company official or counsel]**:

As you know, the Federal Trade Commission is conducting a study of the marketing practices of the motion picture, music recording, and video and personal computer game industries. The purpose of this inquiry is to determine, among other things, how entertainment materials determined by industry to warrant a parental advisory or to be inappropriate for certain age groups because of their violent content are being marketed, and specifically whether they are being marketed to children. This inquiry is undertaken pursuant to the provisions of Section 6 of the FTC Act, 15 U.S.C. § 46. To prepare its report, the Commission is examining (1) the voluntary rating or labeling systems used by members of each industry, and (2) the practices of industry members in marketing such violent materials.

Attached is the Commission's request for information from **[company name]**. We have set two response dates by which to provide the requested information. We ask that you provide the material responsive to the first group of requests by February 2, 2000. These requests seek information about the marketing of several games that have been rated by the Entertainment Software Rating Board as Mature or Teen due to their violent content. We request production of material responsive to the remaining requests by February 23. These requests seek a broader range of information on issues relating to the company's use of the self-regulatory systems for rating games and its advertising and marketing policies.

Any materials that you submit that constitute trade secrets or privileged or confidential commercial or financial information within the meaning of Section 6(f) of the Federal Trade Commission Act, 15 U.S.C. § 46(f), are subject to that provision's constraints on public disclosure. In addition, documents submitted in response to this request that are marked as confidential will not be disclosed without first giving you ten days' notice of the Commission's intention to do so, except as provided in Sections 6(f) and 21 of the FTC Act, 15 U.S.C. §§ 46(f) and 57b-2, and the applicable Commission Rules.

In addition to the material requested, we would be happy to consider any other additional information you believe we should include in our review. Please note that, although an effort has been made to be as comprehensive as possible, the attached requests are not to be construed as all-inclusive. To complete our report we may request additional documents or information.

Thank you for your cooperation in this matter. If you have any questions about the request or would like to discuss the matter, please feel free to call me at 202-326-####.

Very truly yours,

[Counsel for the FTC]

[Sample Electronic Game Company Information Requests]

REQUEST FOR INFORMATION

Instructions for Preparing Responses

1. Each request below seeks production of all documents within the possession, custody, or control of as well as any other person (including, without limitation, attorneys, agents, accountants, advertising agencies and advisors) acting or purporting to act on **[company name]**'s behalf. "Document(s)" means the original (or, in lieu thereof, an exact copy), and all non-identical copies (whether different from originals by reason of notations made on such copies or otherwise) of all written, recorded, transcribed, punched, taped, filmed or graphic matter, however produced or reproduced, including, but not limited to, letters, contracts, correspondence, complaints, focus group reports, advertising material, and computer printouts. It also includes electronic mail.

2. "You," "Your company," or "**[company name]**" means, **[company name]** and all subsidiaries and affiliates used to market video games, personal computer games or coin-operated games.

3. "And" as well as "or" shall be construed both conjunctively and disjunctively, as necessary, in order to bring within the scope of the particular request all documents that otherwise might be construed to be outside its scope. "Any" and "all" mean each and every.

4. If, for any request, there are documents that would be responsive to this request, but which were destroyed, mislaid, or transferred, describe the circumstances and date on which they were destroyed, mislaid, or transferred.

5. Each document not subject to a claim of privilege shall be submitted in its entirety even if only a portion of that document relates to the request. This means that the document shall not be edited, cut or expunged and shall include all appendices, tables or other attachments.

6. If any requested document or statement is the subject of a claim of privilege or is otherwise withheld, the claim must be asserted or the reason for withholding stated no later than the date set for production of the information for each document withheld. A claim of privilege shall include:

   a. the type, title, specific subject matter and date of the document;

   b. the request(s) to which the document is responsive;

   c. the objection to production and the reasons for the objection; and

   d. the names, addresses and positions of each author and recipient of the document.

7. Please identify each request for which the document is responsive. Documents that may be responsive to more than one request need not be submitted more than once.

8. Please stamp each page of each responsive document submitted with a "Bates" number, provide an index to the documents, and provide two sets of such materials.

9. Several terms are defined in the individual requests. Please use those definitions for responding to all of the requests.

10. Unless otherwise indicated, this request asks for information and documents from January 1, 1997.

11. Your submission must be dated and signed by an officer authorized to do so on your company's behalf, certifying that, to the best of the signer's knowledge, information, and belief, formed after a reasonable inquiry, the submission is complete and correct as of the time it is made. Under 18 U.S.C. § 1001, anyone who knowingly and willfully makes false statements or representations to a United States government agency is subject to fines and/or imprisonment.

Responses to Requests 1-7 should be provided no later than February 2, 2000.

Please provide:

COMPANY INFORMATION

1. The full name and address of your company and of any parent, subsidiary or affiliated companies.

2. A current organizational chart identifying the various departments and organizations within **[company name]**. Please also provide a detailed description of the responsibilities of each department or organization involved in the advertising or marketing of your company's products.

3. A list of your company's video, personal computer and coin-operated games (hereinafter called "game" or "games"), and products based on those games (e.g., action figures, t-shirts, hats), marketed by the company at any time since January 1, 1997. Please also provide the date your company first began marketing those products.

4. The web addresses for all sites operated, authorized, registered, owned or sanctioned by your company to promote, make available for play or download, or sell one or more of its games or demos for those games, or to market products based on its games.

MARKETING INFORMATION

5. Each different advertisement[1] and a detailed description of each different promotion[2] used

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[1] "Advertisement" or "advertising" shall mean any written or verbal statement, illustration or depiction, or other material that is designed, directly or indirectly, to create interest in, promote, or affect the sale of goods or services, appearing in any medium, including but not limited to, brochures, newspapers, magazines, pamphlets, leaflets, circulars, mailers, book inserts, mousepads, free standing inserts, letters, catalogues, recording singles, music videos, demos, album cover art provided to retailers or other recording industry members, posters, stickers, tattoos, festival handouts, charts, billboards, public transit cards, point of purchase displays, package inserts, package labels, films, slides, radio, television, or cable television, on-line, electronic, or Internet messages or images, audio programs transmitted over a telephone system, or program-length commercials ("infomercials"). It also includes co-op advertising and any other advertising or promotion done with any third party.

[2] "Promotion" shall mean any activity or event that is designed, directly or indirectly, to create interest in, or affect the sale of, goods or services.

in the United States by your company for "rated games."[3] Include a dissemination schedule for each of the television, radio, magazine, newspaper or Internet advertisements.

6. The total unit and dollar sales in the United States for each of your company's rated games for 1997, 1998 and 1999. Indicate the percentage of total unit and dollar sales for all of your company's games that the rated games represent for each of those years.

7. All marketing plans[4] for the following games (hereinafter referred to as "specified games[5]"):

[list of games]

Responses to the remaining Requests should be provided no later than February 23, 2000.

Please provide:

RATINGS PROCESS

8. A detailed description of the process **[company name]** follows to obtain ratings from the ESRB for its video and personal computer game products or for web sites featuring multi-player on-line games or other interactive areas, such as chat rooms or bulletin boards. If the process has changed since January 1, 1997, describe such changes. Provide any

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[3] "Rated games" means games that were rated Teen, Mature or Adults Only because of their violent content using the Entertainment Software Rating Board (ESRB) or Entertainment Software Rating Board Interactive (ESRB*i*) system, were rated with a violence level of 2 or higher using the Recreational Software Advisory Council (RSAC) or Recreational Software Advisory Council Interactive (RSAC*i*) system, or received a red label designation because of violent content using the system for coin-operated games developed by the American Amusement Machine Association (AAMA), the Amusement and Music Operators Association (AMOA), and the International Association of Family Entertainment Centers (IAFEC).

[4] "Marketing Plan" includes advertising and marketing objectives and strategies, themes, or concepts, as well as media recommendations, media plans, marketing reports, business studies, creative strategies or briefs, and any other documents that set out, describe, or discuss the planned or actual approaches for marketing, advertising or promoting video games, personal computer games or coin-operated games, whether created by the company or by its agents, including but not limited to, ad agencies, media buyers, or advertising consultants.

[5] For each specified game, we mean all titles in the series using that name. Thus, for example, our request for the marketing plans for **[game name]**, includes the marketing plans for each game of the **[game name]** brand, series or franchise, including **[game name]**, and any other title that is part of that series.

information received from ESRB that describes the rating system or how companies may obtain a rating for their games or for web sites featuring games or other interactive areas.

9. A detailed description of the process **[company name]** follows to obtain ratings from RSAC (now part of the Internet Content Rating Association - ICRA) for its video and personal computer game products or for web sites featuring those products. If the process has changed since January 1, 1997, describe such changes. Provide any information received from RSAC or ICRA that describes the rating system or how companies may obtain a rating.

10. A list of your company's web sites rated by RSAC or ICRA, including the address of the web site, its rating, and the date that it received its rating.

11. A detailed description of the process **[company name]** follows to obtain ratings using the AAMA system for its coin-operated games. If the process has changed since January 1, 1997, describe such changes. Provide any information received from AAMA that describes the rating system or how companies may obtain a rating.

12. A list of the coin-operated games rated using the AAMA system since January 1, 1995, including the name of the coin-operated game, its rating, the date that it received its rating, and the date the company first began marketing the game.

13. A detailed description of any steps taken by **[company name]** to educate the public about any of the rating systems for games. Provide any surveys, studies, focus group reports, or other research discussing or evaluating any such educational efforts.

ADVERTISING AND MARKETING

14. All documents authored by your company or received from the ESRB, AAMA or others that describe or specify how the rating or its descriptors should a) appear (i.e., the design) on a game, b) be applied/affixed with the game, or c) be included in advertising or marketing materials for the game. Describe in detail any instance where the policies, procedures or guidelines set out in those documents were not followed; and include a copy of any advertisement or package that did not follow those procedures, and the date and place where that advertisement or package was published, broadcast or disseminated.

15. A detailed description of **[company name]**'s policies, procedures or guidelines for advertising or promoting a game. Please describe any differences that may exist in that process when your company advertises games rated Teen versus games rated Everyone. Describe also any differences in that process when your company advertises games rated Mature versus games rated Teen. Include copies of any written standards, guidelines or policies of the company on how it advertises or promotes games to the public, including any training materials for personnel that refer or relate to those policies.

16. All documents referring or relating to the policies or practices of any publication, broadcast or cable company, or Internet media for accepting advertisements for violent games or for rated games.

17. All demographic data on the viewing and listening audience for each advertisement or promotion for the specified games provided in response to request five, above.

18. To the extent not already provided, all documents, including those authored by your company, its advertising agencies, media buyers, marketing consultants, licensors or licensees referring or relating to the demographic(s) of the target or actual audience(s) for the specified games.

19. The name and address of each advertising agency, media buyer or consultant used by **[company name]** in the planning, preparation or dissemination of advertising, marketing or promotion for the specified games.

20. All agreements by which **[company name]** has licensed the name, images or characters from any rated game developed by your company. Provide all documents referring or relating to your company's involvement in, approval of, or clearance of any advertising or promotional efforts by licensees marketing those products.

21. All agreements with third-party developers or licensors that authorize your company to market toys, actions figure or other products based on rated games that you publish. Include a detailed description of what role, if any, a game developer or licensor plays in the development or approval of marketing plans for any game or product based on those games. Provide all documents referring or relating to game developer or licensor involvement in, approval of, or input into the marketing plans or advertising for any of the specified games.

22. A list of each product placement (an appearance or mention of the trademark, product name, or product) of any of your company's rated games in motion pictures or in television (cable or broadcast) programs, by name of the game, and name, date and time of the production's first airing.

23. All documents referring or relating to efforts by your company to encourage or discourage the purchase, rental, play, downloading or use of its rated games or game demos by those under the age for which the game is rated.

24. A detailed description of the steps taken by **[company name]** to encourage retailers to use or consider the rating systems in decisions whether to stock, display, advertise, promote, rent or sell games.

25. All marketing plans referring or relating to efforts by **[company name]** to promote action games or shooter games to teenagers (excluding marketing plans created solely to promote a specific game title).

26. All marketing plans for the following games:

[list of games]

INTERACTIVE DIGITAL SOFTWARE ASSOCIATION ADVERTISING CODE

27. All written policies of your company, referring or relating to Section IV. B. and IV. C. of the IDSA advertising Code of Conduct (hereinafter "Code") that requires companies not to "specifically target advertising for entertainment software products rated for Teen, Mature, or Adults Only, to consumers for whom the product is not rated as appropriate," or "represent in their advertising ... that a title is appropriate for persons under the age for which the game has been rated." State the date on which the company first adopted and last amended each of these policies.

28. A detailed description of the steps taken by your company to ensure that advertisements for Teen, Mature or Adults Only games are not "specifically targeted" to consumers for whom the product is not rated as appropriate. Include in this description: a) what information you possess on the demographics of the expected audience before each ad is placed; b) what information you obtain on the actual demographics of the audience that viewed or heard the ad; and c) what instructions you give to media buyers, brokers, advertising agencies and others who place your company's advertisements regarding the audience demographics for the media in which ads are to be placed.

29. A detailed description of the steps taken by your company to ensure that advertisements for Teen, Mature or Adults Only games not represent that a title is appropriate for persons under the age for which the game is rated.

30. A detailed description of any instance(s) where IDSA notified your company about a complaint or inquiry regarding your company's advertising, marketing or labeling of its games. Describe how that complaint or inquiry was resolved.

INTERNET

31. To the extent not already provided, all documents referring or relating to **[company name]**'s policies or practices regarding advertising or promotion of rated games on the Internet. If the policies or practices have changed since January 1, 1997, describe such changes.

32. All documents referring or relating to your company's policies and practices regarding making rated games available for play, demos for those rated games available for download, or rated games available for sale on the Internet, including any limitations placed on the age of those who can play, download, or buy such games. Include all documents relating to any efforts to enforce any such limitations.

33. A detailed description of any steps taken by your company to identify the ages of persons visiting the company's web sites.

34. All documents referring or relating to the demographics of persons accessing your company's web sites (listed in response to request four) or to the appeal of those web sites and web pages to children under 17.

SALES AND POPULARITY OF GAMES

35. The unit and dollar sales of all your company's games sold in the United States, by year and rating for 1997, 1998 and 1999.

36. To the extent not already provided, all documents referring or relating to the age of purchasers, players, users or renters of your company's rated games.

COMPLAINTS AND INQUIRIES

37. All complaints or inquiries, and any responses thereto, received by **[company name]** regarding a) the violent content of any game, b) the advertising or advertising copy used for any rated game, or c) whether your company's advertisements or games appeal to those under the age for which the game is rated as appropriate.

38. A detailed description of the process **[company name]** follows when responding to complaints or inquiries on the issues described in the previous Request.

RESEARCH AND ANALYSIS

39. All surveys, studies, data, focus group reports, or other research referring or relating to:

a. the game buying or playing preferences of children under 17;
b. the marketing or advertising of Mature rated games to children under 17, and of Teen rated games to children under 13;
c. the rating systems for games, including consumer awareness of, understanding of, use of, or satisfaction with those systems; or
d. the violent content of games or the violent content of advertising for games.

40. All studies, surveys, data, focus group reports, copy tests or other research referring or relating to any of the specified games or to a proposed, planned or actual advertisement for any of the specified games regardless of the date or author of the research, report or study.

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

Bureau of Consumer Protection

[Sample D - Theater Owner Letter]

[Company or counsel name and address]

Re: Study of the Marketing of Violent Entertainment to Children
Matter No. P994511

Dear **[company official or counsel]:**

I am writing you concerning the Federal Trade Commission's study of the marketing practices of the motion picture, music recording, and video and personal computer game industries. The purpose of this study is to determine, among other things, how entertainment materials determined by industry to warrant a parental advisory or to be inappropriate for certain age groups because of their violent content are being marketed, and specifically whether they are being marketed to children. This inquiry is undertaken pursuant to the provisions of Section 6 of the FTC Act, 15 U.S.C. § 46. To prepare its report, the Commission needs to examine: (1) the voluntary rating or labeling systems used by members of each industry; (2) the practices of industry members in marketing such violent materials; and (3) the access that minors have to these materials.

As **[company name]** is a major exhibitor of motion pictures, the Commission is requesting your assistance in gathering materials needed for this study. We have attached the Commission's request for information from **[company name]**. We ask that you provide the material responsive to the requests by February 17, 2000.

Any materials that you submit that constitute trade secrets or privileged or confidential commercial or financial information within the meaning of Section 6(f) of the Federal Trade Commission Act, 15 U.S.C. § 46(f), are subject to that provision's constraints on public disclosure. In addition, documents submitted in response to this request that are marked as confidential will not be disclosed without first giving you ten days' notice of the Commission's intention to do so, except as provided in Sections 6(f) and 21 of the FTC Act, 15 U.S.C. §§ 46(f) and 57b-2, and the applicable Commission Rules.

In addition to the material requested, we would be happy to consider any other additional information you believe we should include in our review. Please note that, although an effort has been made to be as comprehensive as possible, the attached requests are not to be construed as all-inclusive. To complete our report we may request additional documents or information.

Thank you for your assistance. If you have any questions about the request or would like to discuss the matter, please feel free to call me at 202-326-####.

Very truly yours,

[Counsel for the FTC]

[Sample Theater Owner Information Requests]

REQUEST FOR INFORMATION

Instructions for Preparing Responses

1. Each request below seeks information or documents within the possession, custody, or control of [company name], as well as any other person (including, without limitation, attorneys, agents, accountants, advertising agencies and advisors) acting or purporting to act on **[company name]**'s behalf. "Document(s)" means the original (or, in lieu thereof, any exact copy), and all non-identical copies (whether different from originals by reason of notations made on such copies or otherwise) of all written, recorded, transcribed, punched, taped, filmed or graphic matter, however produced or reproduced, including, but not limited to, letters, contracts, correspondence, complaints, focus group reports, advertising material, and computer printouts. It also includes electronic mail.

2. "You," "your company" means **[company name]**, all parents, subsidiaries and affiliates, as well as any d/b/a that **[company name]** uses to market or exhibit motion pictures.

3. "And" as well as "or" shall be construed both conjunctively and disjunctively, as necessary, in order to bring within the scope of the particular request all documents that otherwise might be construed to be outside its scope. "Any" and "all" mean each and every.

4. If, for any request, there are documents that would be responsive to this request, but were destroyed, mislaid, or transferred, describe the circumstances and date on which they were destroyed, mislaid, or transferred.

5. Each document not subject to a claim of privilege shall be submitted in its entirety even if only a portion of that document relates to the request. This means that the document shall not be edited, cut or expunged and shall include all appendices, tables or other attachments.

6. If any requested document or statement is the subject of a claim of privilege or is otherwise withheld, the claim must be asserted or the reason for withholding stated no later than the date set for production of the information for each document withheld. A claim of privilege shall include:

    a. the type, title, specific subject matter and date of the document;

    b. the requests to which the document is responsive;

    c. the objection to production and the reasons for the objection; and

    d. the names, addresses and positions of each author and recipient of the document.

7. Please identify each request for which the document is responsive. Documents that may be responsive to more than one request need not be submitted more than once.

8. Please stamp each page of each responsive document submitted with a "Bates" number, provide an index to the documents, and provide two sets of such materials.

9. Several terms are defined in the individual requests. Please use those definitions for responding to all of the requests.

10. Your submission must be dated and signed by an officer authorized to do so on the company's behalf, certifying that, to the best of the signer's knowledge, information, and belief, formed after a reasonable inquiry, the submission is complete and correct as of the time it is made. Under 18 U.S.C. § 1001, anyone who knowingly and willfully makes false statements or representations to a United States government agency is subject to fines and/or imprisonment.

Please provide the following information:

1. The full name and address of your company and of any parent, subsidiary or affiliated companies.

2. A current organizational chart identifying the various departments and organizations within **[company name]** and a detailed description of the various responsibilities of each department or organization involved in the theatrical exhibition of motion pictures or the advertising or marketing of motion pictures through theatrical trailers or otherwise.

3. The web address for all sites operated, authorized, registered, owned, or sanctioned by **[company name]** to promote theater attendance in general or attendance at any specific motion picture.

4. The total number of domestic theaters and screens owned or operated by **[company name]**.

5. A detailed description of **[company name]**'s policies, procedures, or guidelines for enforcing the age restrictions on R and NC-17 rated movies. Provide copies if any of the above policies are in writing or on video. Also provide copies of all employee training materials.

6. Provide all documents referring or relating to enforcing the age restriction of the rating system since January 1, 1999. This includes, but is not limited to, complaints or inquiries from consumers and responses thereto, correspondence with the National Association of Theatre Owners ("NATO"), the Motion Picture Association of America ("MPAA"), any film distributor, or with other exhibitors.

7. A detailed description of **[company name]**'s policies, procedures, or guidelines regarding the showing of theatrical trailers preceding motion pictures or in theater lobbies. In particular, describe its policies concerning trailer compatibility with the feature presentation motion pictures. Provide copies if any of the above policies are in writing or on video.

8. Provide all documents referring or relating to the compatibility of trailers with the feature presentation since January 1, 1999. This includes, but is not limited to: a) all **[company name]** documents identifying the trailers to be shown with any feature presentation; b) all **[company name]** documents referring or relating to compatibility issues; c) any correspondence with motion picture distributors, MPAA, NATO, or other exhibitors referring or relating to compatibility issues; or d) any complaints or inquiries from the public regarding trailer compatibility and **[company name]**'s response thereto.

9. All documents, since January 1, 1999, referring or relating to: a) how movie ratings and their descriptors should be displayed or made available to the public; b) whether product ratings and their descriptors should be included in advertising or marketing materials for motion pictures; and c) the role of exhibitors in informing the public about the rating

systems for movies.

10. A detailed description of any steps **[company name]** has taken since January 1, 1997 to educate the public about any part of the movie rating system. Please provide any surveys, studies, focus group reports, or other research conducted since January 1, 1997 discussing or evaluating any such educational efforts.

11. A detailed description of all cooperative advertising agreements between **[company name]** and any film distributor concerning any PG-13 or R rated motion pictures (if rated as such due to violent content) exhibited by **[company name]** or to be exhibited since January 1, 1999. Please include copies of all such agreements.

12. All complaints or inquiries, and any responses thereto, since January 1, 1999, referring or relating to the rating, advertising, or marketing of PG-13 or R rated motion pictures (if rated as such due to violent content), and any other documents referring or relating to such complaints.

13. Each different advertisement,[1] and a detailed description of each promotion,[2] used by **[company name]** for any motion picture rated PG-13 or R (if rated as due to violent content) it exhibited since January 1, 1999 and a dissemination schedule for each different newspaper, periodical, Internet, radio and television advertisement. This includes, but is not limited to, any cooperative advertisement pursuant to any agreement identified in response to Request 11.

14. Any correspondence with any film distributor, since January 1, 1999, regarding the results of inspections performed by trailer tracking or checking services and all other documents referring or relating to that correspondence.

15. A representative sample of any contracts between **[company name]** and any film distributor, since January 1, 1999, concerning exhibition of a motion picture in a theater.

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[1] "Advertisement" or "advertising" shall mean any written or verbal statement, illustration or depiction, or other material that is designed, directly or indirectly, to create interest in, promote, or affect the sale of goods or services, appearing in any medium, including but not limited to brochures, newspapers, magazines, pamphlets, leaflets, circulars, mailers, book inserts, mousepads, free standing inserts, letters, catalogues, recording singles, music videos, demos, album cover art provided to retailers or other recording industry members, posters, stickers, tattoos, festival handouts, charts, billboards, public transit cards, point of purchase displays, package inserts, package labels, films, slides, radio, television, or cable television, on-line, electronic, or Internet messages or images, audio programs transmitted over a telephone system, or program-length commercials ("infomercial"). It also includes co-op advertising and any other advertising or promotion done with any third party.

[2] "Promotion" shall mean any activity or event that is designed, directly or indirectly, to create interest in, or affect the sale of, goods or services, including but not limited to celebrity appearances, endorsements, and/or performances.

16. A detailed description of any steps taken by **[company name]** to identify the ages of the persons visiting web sites identified in response to Request No. 3 above.

17. All studies, surveys, data, focus group reports, copytests, or other research conducted since January 1, 1997 referring or relating to:

    a. the film preferences of children under 17;

    b. the marketing or advertising of R rated movies to children under 17;

    c. the movie rating system; and

    d. the violent content in movies.

18. All documents, since January 1, 1997 referring or relating to the marketing of: a) R or NC-17 rated films to persons under 17 years of age; b) PG-13 rated films to persons under 13. Please provide documents that discuss the above issues in general or in relation to a particular film.

19. A detailed description of **[company name]**'s policies, procedures, or guidelines regarding the placing of violent[3] coin-operated games in theater lobbies. In particular, describe any policies that require the display of a rating on those games, or that discourage playing of those games by children. Provide copies if any of the above policies are in writing or on video.

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[3] For purposes of this request, a coin-operated game is violent if it received a red label designation because of its violent content, using the rating system developed by the American Amusement Machine Association (AAMA), the Amusement and Music Operators Association (AMOA), and the International Association of Family Entertainment Centers (IAFEC).

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

Bureau of Consumer Protection

[Sample E - Retailer Letter]

[company or counsel name and address]

Re: Study of the Marketing of Violent Entertainment to Children
Matter No. P994511

Dear **[company official or counsel:]**

I am writing you concerning the Federal Trade Commission's study of the marketing practices of the motion picture, music recording, and video and personal computer game industries. The purpose of this study is to determine, among other things, how entertainment materials determined by industry to warrant a parental advisory or to be inappropriate for certain age groups because of their violent content are being marketed, and specifically whether they are being marketed to children. This inquiry is undertaken pursuant to the provisions of Section 6 of the FTC Act, 15 U.S.C. § 46. To prepare its report, the Commission needs to examine: (1) the voluntary rating or labeling systems used by members of each industry; (2) the practices of industry members in marketing such violent materials; and (3) the access that minors have to these materials.

As **[company name]** is a major retailer of music recordings, films, and video and personal computer games, the Commission is requesting your assistance in gathering materials needed for this study. We have attached the Commission's request for information from **[company name]**. We ask that you provide the material responsive to the requests by February 17, 2000.

Any materials that you submit that constitute trade secrets or privileged or confidential commercial or financial information within the meaning of Section 6(f) of the Federal Trade Commission Act, 15 U.S.C. § 46(f), are subject to that provision's constraints on public disclosure. In addition, documents submitted in response to this request that are marked as confidential will not be disclosed without first giving you ten days' notice of the Commission's intention to do so, except as provided in Sections 6(f) and 21 of the FTC Act, 15 U.S.C. §§ 46(f) and 57b-2, and the applicable Commission Rules.

In addition to the material requested, we would be happy to consider any other additional information you believe we should include in our review. Please note that, although an effort has been made to be as comprehensive as possible, the attached requests are not to be construed as all-inclusive. To complete our report we may request additional documents or information.

Thank you for your assistance. If you have any questions about the request or would like to discuss the matter, please feel free to call me at 202-326-####.

Very truly yours,

[Counsel for the FTC]

[Sample Retailer Information Requests]

REQUEST FOR INFORMATION

Instructions for Preparing Responses

1. Each request below seeks information or documents within the possession, custody, or control of **[company name]**, as well as any other person (including, without limitation, attorneys, agents, accountants, advertising agencies, and advisors) acting or purporting to act on **[company name]**'s behalf. "Document(s)" means the original (or, in lieu thereof, an exact copy) and all non-identical copies (whether different from originals by reason of notations made on such copies or otherwise) of all written, recorded, transcribed, punched, taped, filmed, or graphic matter, however produced or reproduced, including, but not limited to, letters, contracts, correspondence, complaints, focus group reports, advertising material, and computer printouts. It also includes electronic mail.

2. "**[Company name]**," "you," or "your company" as used throughout the requests includes **[company name]**, **[name of specific subsidiaries]**, and all subsidiaries and affiliates of these entities used to market, sell, or rent movies, music recordings, or video or personal computer games.

3. "And" as well as "or" shall be construed both conjunctively and disjunctively, as necessary, in order to bring within the scope of the particular request all documents that otherwise might be construed to be outside its scope. "Any" and "all" mean each and every.

4. If, for any request, there are documents that would be responsive to this request, but which were destroyed, mislaid, or transferred, describe the circumstances and date on which they were destroyed, mislaid, or transferred.

5. Each document not subject to a claim of privilege shall be submitted in its entirety even if only a portion of that document relates to the request. This means that the document shall not be edited, cut, or expunged and shall include all appendices, tables, or other attachments.

6. If any requested document or statement is the subject of a claim of privilege or is otherwise withheld, the claim must be asserted or the reason for withholding stated no later than the date set for production of the information for each document withheld. A claim of privilege shall include:

   a. the type, title, specific subject matter, and date of the document;

   b. the requests to which the document is responsive;

   c. the objection to production and the reasons for the objection; and

d. the names, addresses, and positions of each author and recipient of the document.

7. Please identify each request to which a document is responsive. Documents that may be responsive to more than one request need not be submitted more than once.

8. Please stamp each page of each responsive document submitted with a "Bates" number, provide an index to the documents, and provide two sets of such materials.

9. Several terms are defined in the individual requests. Please use those definitions for responding to all of the requests.

10. Unless otherwise indicated, this request asks for information and documents from January 1, 1998.

11. Your submission must be dated and signed by an officer authorized to do so on your company's behalf, certifying that, to the best of the signer's knowledge, information, and belief, formed after a reasonable inquiry, the submission is complete and correct as of the time it is made. Under 18 U.S.C. § 1001, anyone who knowingly and willfully makes false statements or representations to a United States government agency is subject to fines and/or imprisonment.

Responses to the following Requests should be provided no later than [date] 2000.

Please provide:

Company Information

1. The full name and address of your company and of any parent, subsidiary, or affiliated company. Please also provide all retail store names through which **[company name]** does business in the United States and the number of stores, for each retail outlet, operating in 1999.

2. A current organizational chart identifying the various departments and organizations within **[company name]**. Please also provide a detailed description of the responsibilities of each department or organization involved in the advertising[1] of specified products.[2]

3. The web address for all sites operated, authorized, registered, owned, or sanctioned by **[company name]** to: (a) promote[3] any specified product; (b) make available for play, viewing, listening, download, or rental any specified product; or (c) sell any specified product ("**[company name]** web site(s)"). Please describe any arrangements to place a hyperlink to **[company name]** web sites on non **[company name]** web sites promoting any specified product.

Advertising and Marketing

4. A detailed description of any steps **[company name]** has taken to follow, participate in, enforce, or educate the public about the rating (movies and games) or labeling (music

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[1] "Advertisement" or "advertising" shall mean any written or verbal statement, illustration or depiction, or other material that is designed, directly or indirectly, to create interest in, promote, or affect the sale of goods or services, appearing in any medium, including but not limited to brochures, newspapers, magazines, in-store magazines, pamphlets, leaflets, circulars, mailers, book inserts, mousepads, free standing inserts, letters, catalogues, recording singles, music videos, demos, album cover art provided to retailers or other recording industry members, posters, stickers, tattoos, festival handouts, charts, billboards, public transit cards, point of purchase displays, package inserts, package labels, films, slides, radio, television, or cable television, on-line, electronic, or Internet messages or images, audio programs transmitted over a telephone system, or program-length commercials (infomercials). It also includes co-op advertising and any other advertising or promotion done with any third party.

[2] "Specified products" means movies, music recordings, or video or personal computer games ("games").

[3] "Promotion" or "promote" shall mean any activity or event that is designed, directly or indirectly, to create interest in, or affect, the sale of goods or services.

recordings) systems used by industry members[4] in advertising, selling, or renting rated or stickered[5] products.

5. A detailed description of any steps **[company name]** has taken to implement industry programs to assist parents in using the rating or labeling systems, such as the Video Software Dealers Association's "Pledge To Parents" program or ESRB's "Commitment to Parents" program.

6. A detailed description of **[company name]**'s policies, procedures, or guidelines, including the approval or review process, for *advertising or marketing* any rated or stickered product in all media, including in-store magazines and the Internet. Also provide all written policies, procedures, or guidelines, including employee training materials, referring or relating to those policies. If the policies, procedures, or guidelines have changed during the relevant period, please describe such changes.

7. A detailed description of **[company name]**'s policies, procedures, or guidelines relating to whether advertisements or promotions for rated or stickered products show or describe the rating, the content descriptors,[6] or the PAL. Provide all such written policies, procedures, or guidelines. Please describe any steps taken by **[company name]** to ensure that advertisements or promotions for rated or stickered products show or describe the rating, the content descriptors, or the PAL. If the policies, procedures, or guidelines have changed during the relevant period, please describe such changes.

8. A detailed description of **[company name]**'s policies, procedures, and guidelines for making rated or stickered products available for *viewing, listening, playing, rental, downloading, or purchase* in any **[company name]** store or on any **[company name]** web site. Please describe any limitations placed on the age of those who can view, listen to, play, rent, download, or purchase such rated or stickered products, and any efforts to enforce any such limitations. Also provide all written policies, procedures, or guidelines, including employee training materials, referring or relating to those policies. If the

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[4] "Industry member" means all members of the movie, music recording, and video and personal computer game industries, including owners, manufacturers, distributors, developers, publishers, retailers, or industry associations.

[5] "Rated" or "stickered" product(s) means: movies rated R or NC-17 by the Motion Picture Association of America's Classification and Rating Administration; music recordings containing an Explicit Content Parental Advisory Label ("PAL"); and video and personal computer games rated Mature or Adults Only under the Entertainment Software Rating Board ("ESRB") or ESRB interactive rating systems.

[6] Content descriptors provide information on why a movie, video game, or personal computer game received a particular rating. For example, video games rated "Mature" because of their violent content may include content descriptors such as "realistic violence" or "realistic blood and gore," and movies rated "R" because of their violent content may include content descriptors such as "rated R for sci-fi violence and gore" or "rated R for graphic violence."

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policies, procedures, or guidelines have changed during the relevant period, please describe such changes.

9. For a recording that has both a stickered explicit version and a non-stickered edited version, and for a movie that has both a rated version and an unrated version, provide a detailed description of: whether **[company name]** makes both versions of the recording/movie available for sale or rental and whether **[company name]** advertises or promotes each version. If so, describe any general differences in the advertising or promotion of the two versions since January 1, 1999.

10. For rated or stickered products, each different advertisement and a detailed description of each different promotion disseminated or used during the periods May 28 through June 6, 1999 and December 3 through December 12, 1999. Please include a dissemination schedule for each of the advertisements.

11. All demographic data on the viewing or listening audiences for each advertisement or promotion provided in response to Request No. 10 above.

12. A detailed statement of whether, and how often, **[company name]** has entered into cooperative agreements with industry members since January 1, 1999 to advertise rated or stickered products. Please provide a detailed description of the process for reviewing and approving such advertisements, and the names and positions of the personnel involved (from **[company name]** or other industry members). Please provide a sample copy of such an agreement.

13. All demographic data (excluding zip codes) on persons visiting **[company name]** retail stores or web sites, including those persons viewing, listening, playing, renting, downloading, or purchasing any rated or stickered product since January 1, 1999.

Trailers and clips

14. A detailed description of how **[company name]** obtains movie or game trailers or clips for exhibition in its stores or on **[company name]** web sites, including the role of any film distributor or game publisher in that process. Also provide all written agreements between **[company name]** and any film distributor or game publisher on this issue.

15. A detailed description of **[company name]**'s policies, procedures, and guidelines for showing trailers and clips for movies and games in its stores. Describe whether there are any differences in these policies based on whether the trailer or clip is for a rated movie or game. Provide all written policies, procedures, or guidelines, or any instructions **[company name]** sends to its stores, concerning the exhibition of trailers or clips.

16. All movie or game trailers or clips (or trailer tapes if more than one trailer is contained on a video tape) exhibited in any **[company name]** store or on any **[company name]** web site for the periods May 28 through June 6, 1999 and December 3 through December 12, 1999.

Sales and Popularity of Specified Products

17. The total unit and dollar sales in the United States of all movies, music recordings, and games sold or rented by **[company name]** for 1998 and 1999, by year and product category.

18. The unit and dollar sales in the United States of all rated movies, rated games, and stickered music recordings (and the unit and dollar sales of any edited versions or unrated versions of these recordings or movies) sold or rented by **[company name]** for 1998 and 1999, by year and product category.

19. For 1998 and 1999, a list, using unit sales, by year and product category of:

    your fifty best-selling movies;
    your fifty best-selling rated movies;
    your fifty best-selling games;
    your fifty best-selling rated games;
    your fifty best-selling music recordings; and
    your fifty best-selling stickered music recordings.

20. For 1998 and 1999, a list, using unit rentals, by year and product category of:

    your top fifty movie rentals;
    your top fifty rated movie rentals;
    your top fifty game rentals; and
    your top fifty rated game rentals.

21. To the extent not already provided, all demographic data on the actual purchasers, players, users, or renters of: (a) the fifty best-selling rated or stickered products and (b) the fifty top rentals of rated products identified in Requests No. 19 and No. 20 above.

Complaints and Inquiries

22. All complaints or inquiries, and any responses thereto, that **[company name]** has received that relate to:

    a. the violent content of any specified product;

    b. the advertising or marketing of rated or stickered products, including the failure of advertisements or product packages to display the rating or the PAL;

    c. the failure to sticker music recordings as containing explicit content;

    d. the rental or sale of rated or stickered products to children under 18; or

    e. the appeal of advertisements for rated or stickered products to children under 18.

Please redact any personally identifiable information that would reveal the identity of the person renting or buying a movie to ensure that there be no inadvertent disclosure of personally identifiable information prohibited by the Video Privacy Protection Act, 18 U.S.C. Section 2710.

23. A detailed description of the process **[company name]** has followed when responding to complaints or inquiries on the issues described in Request No. 22 above.

Research and Analysis

24. All studies, surveys, data, focus group reports, copytests, or other research referring or relating to:

a. the movie, music, or game buying, viewing, listening, or renting preferences of children under 18;

b. the marketing or advertising of rated or stickered products to children under 18;

c. the rating or labeling systems used by industry members for the specified products, including consumer awareness of, understanding of, use of, or satisfaction with these systems; or

d. the violent content in the specified products or in music videos.

25. All studies, surveys, data, focus group reports, copytests, or other research referring or relating to the advertising, marketing, sale, rental, or availability of rated or stickered products on the Internet.

Appendix F

MYSTERY SHOPPER SURVEY AND PARENT-CHILD SURVEY

I. INTRODUCTION

In reviewing the publicly available consumer research about voluntary industry rating and labeling of movies, music recordings, and electronic games, the Commission concluded that additional research would provide useful information about consumer use of the rating systems. For example, there were little available data about the degree to which retailers prevent children from purchasing entertainment products that have been rated or labeled by entertainment producers as potentially inappropriate for children. Also, the Commission needed additional information to understand how parents and children perceive and use the available rating and labeling systems.

This Appendix reviews the results of two types of research projects the Commission sponsored to address these information gaps. First, the Commission contracted for a so-called "mystery shopper" study, a nationwide undercover survey of retail stores and theaters. The Commission's contractor recruited 13- to 16-year-olds to visit theaters and stores selling entertainment products and attempt to purchase tickets to R-rated movies, explicit-content labeled music, and "Mature" or M-rated electronic games. Second, the Commission contracted for a national telephone survey of parents and children about their attitudes toward, and their use of, the rating and labeling systems for movies, music recordings, and electronic games.

II. THE "MYSTERY SHOPPER" SURVEY

One key measure in assessing the functioning of the entertainment media industry's self-regulatory rating systems is implementation at the retail level. Although it is the producers of entertainment material whose products are rated or labeled under the self-regulatory systems, it is the retailers who control any sales restrictions included in those systems.[1] This section summarizes studies conducted by other parties, mainly media, to monitor enforcement, and describes the results of the Commission's "mystery shopper"[2] survey.

A. *Third-Party Undercover Shops or "Stings"*

Limited data are available on retailers' enforcement of the rating systems. Most studies have been conducted on an informal basis, usually by media, and suggest that the rating systems are poorly enforced. For example, in August 1999, the Annapolis, Maryland newspaper *The Capital* sent a 16-year-old boy to six area theaters to buy movie tickets for R-rated movies.[3] He was reportedly successful in five of six attempts. One month later, *The Capital* sent the same boy to the same theaters to try again.[4] This time, the 16-year-old was able to buy R-rated tickets four out of six times at the same theaters. A February 1996 *New York Times* article focused on seven children who were trying to get into an R-rated movie in Yonkers, New York.[5] The seven, ranging in age from 8 to 15 years, informed the cashier of their ages yet were still sold tickets. An article in the *Saint Paul Pioneer Press* in June 1999 reported on another informal study that tested whether a nine-year-old boy could purchase M-rated electronic games.[6] The article's author took his son to four large retailers in the St. Paul area to see if he would be permitted to purchase violent electronic games. All of the stores except Funcoland sold M-rated games to the boy without any questions. Funcoland informed the boy that he needed a parent to be with him to purchase the game.

The *USA Today* newspaper conducted a larger scale informal investigation of the sale of R-rated tickets to underage children in June 1999.[7] The paper sent teens to theaters "across the country" and then rated the theaters on their enforcement of industry guidelines restricting under-17 admission to those accompanied by a parent or guardian. The investigation took place after movie theaters pledged to uphold this admission policy. According to the article, the results demonstrated that the teens, in most cases, "sailed right through" the enforcement checks and successfully purchased tickets for R-rated movies. In March 2000, the Illinois Attorney General's office conducted a "sting" to determine whether games rated Mature for violence were sold to unaccompanied minors in Illinois. The visits, conducted by the Attorney General's Investigations Division, took place in seven locations across Illinois. According to the Attorney General's office, children 13 to 15 years of age were able to buy M-rated games in 32 of 32 attempts from major retailers.

These types of unannounced visits at least suggest that the rating systems are only loosely enforced. The small scale or circumscribed geographical focus of the tests leaves open the possibility that only a few theaters or a few cashiers are lax, or that a particular minor used to test the system may appear to be much older than he or she actually is.

B. The Commission's "Mystery Shopper" Survey

To obtain more information about implementation of the rating and labeling systems, the Commission contracted with Second to None, a company experienced in mystery shopping, to conduct visits to retailers across the nation. The contractor arranged 1,158 visits, reflecting attempts at 380 electronic game purchases, 383 music purchases, and 395 movie ticket purchases.

The contractor recruited "mystery shoppers" 13-16 years of age from 46 states and the District of Columbia. Each teenage shopper visited one retail location for each of the three industries, and attempted to purchase either a ticket to an R-rated movie, an explicit-content labeled CD, or an M-rated game.[8] Parents transported the children to the store or theater but were instructed not to accompany the children during the transaction. The contractor required shoppers to submit proof of age and verification for completed purchases by submission of a receipt.[9] About half of the shoppers (52%) were male; 53% were 13 or 14, with the remainder 15 or 16 years of age.[10] The shops were conducted between May and July 2000.

After the visit, the data were submitted by completing a questionnaire available on the contractor's proprietary Web site. The questionnaires focused on three substantive questions, reported in Table 1:

1. Was there any sign, poster, or other information to inform customers of the rating or advisory system or the store or theater's policy on rating or advisory enforcement?

2. Was the child able to purchase the product or admission ticket?

3. Did the cashier or clerk asked the child's age before purchase?

The results of the survey are reported in Table 1 below.

Table 1: Total Frequencies and Percentages of Yes and No Responses to Each of Questions 1, 2, and 3 for Each Product Line.

Product		**Movies**		**Music**		**Games**	
		Shoppers (#)	Percent	Shoppers (#)	Percent	Shoppers (#)	Percent
Q1	NO	182	46	337	88	335	88
Was Rating Information Posted?	YES	213	54	46	12	44	12
Q2	NO	212	54	56	15	59	16
Was Child Able to Make Purchase?	YES	183	46	327	85	321	85
Q3	NO	204	52	321	84	322	85
Did Employee Ask Age?	YES	191	48	62	16	58	15

C. Availability of Rating Information at Stores and Theaters

Electronic game retailers and music retailers were similar to each other in generally failing to post rating information prominently in the store. Relatively few parents – 12% – noted that they had seen information about the rating or advisory system or the store's policy posted at game or music stores.[11] Although it is possible that this information was posted somewhere in the store, these data at least suggest that this information is not prominently displayed in game and music stores. Movie theaters, on the other hand, were much more likely to provide information about the rating system or theater enforcement policy. The majority of theaters (54%) did provide this kind of information.

D. Purchase Success and Age-Check Data

Approximately equal numbers of children were able to buy M-rated games and explicit-content labeled recordings: 85% of the children in the survey were able to buy these games and 85% were able to buy recordings.[12] Less than 17% of the music and game store clerks (16% and 15%, respectively) asked the children attempting to purchase games and music recordings how old they were. Movie theaters, on the other hand, were much more likely to restrict access to R-rated movies. Slightly more than half of the theaters enforced the MPAA's restriction that children under age 17 must be accompanied by an adult to see R-rated movies: 54% refused to sell tickets to see an R-rated movie to the shoppers. Almost half (48%) of the cashiers asked the shopper's age at point of sale. Nonetheless, slightly less than half (46%) of theaters did sell tickets to shoppers under 17 years of age. And, in those cases where a theater does restrict underage shoppers' entry at the box office, there are still ways for determined children to gain entry, including having an older friend or sibling purchase the tickets for a group or purchasing a ticket to a PG or PG-13 movie at the box office and then switching to another movie once inside a multiplex.[13]

E. Age, Gender, and Major Chain Comparisons

For each of the three product categories, the shopper's age significantly influenced whether the shopper could complete the purchase and whether the retail clerk or movie cashier asked the child's age.[14] In general, younger children had less success in purchasing material and were more frequently asked their age.[15] Nonetheless, even the youngest shoppers (13-year-olds) were successful in purchasing the ticket or product at 29% of movie theaters, 70% of music stores, and 76% of game stores. Males had less success than females in purchasing R-rated movie tickets, but enforcement was about the same for males and females among music and game retailers.

Looking only at the largest retailers and theater chains, of 267 shoppers attempting to buy tickets to an R-rated movie from leading chains American Multi-Cinema, Inc., Carmike Cinemas, Inc., Century Theatres, Cinemark USA, Inc., GC Companies, Inc., Hoyts Cinemas Corp., Loews Cineplex Entertainment Corp., National Amusements, Inc., Regal Cinemas, Inc., and United Artist Theatre Circuit, Inc., 119 were successful (45%). Among large electronic game retailers, 227 of

258 shoppers (88%) were able to purchase M-rated electronic games at Babbage's Etc., Best Buy Co., Inc, Electronics Boutique Holdings Corp., KB Toys, Kmart Corp., Sears Roebuck & Co., Target Stores, Inc., Toys "R" Us, Inc., and Wal-Mart Stores, Inc. Among large music retailers, 225 of 253 shoppers (89%) were able to purchase explicit-content labeled recordings at stores owned by Best Buy Co., Inc., MTS, Inc. (Tower Records), Musicland Group, Inc., Target Stores, Inc., Trans World Entertainment Corp., and Wherehouse Entertainment, Inc. Overall, the larger movie theater chains and smaller chains and independents had comparable enforcement rates. The largest music and game retailers, however, were significantly more likely to permit the purchase, and were less likely to check the age of the mystery shopper, than were smaller music and game retailers.

III. THE COMMISSION'S SURVEY OF PARENTS AND CHILDREN REGARDING SELF-REGULATORY PRODUCT RATING SYSTEMS

The second research project the Commission undertook was a nationwide telephone survey to learn more about consumer perceptions of the rating and labeling systems. The goal of the survey, contracted with Roper Starch Worldwide ("RSW"), was to collect information on parents' awareness and use of the systems; their attitudes toward the systems; their knowledge of the systems; and their views on violence and the role of the rating and labeling systems in providing information about violence. The survey methodology is set out in Section A below, followed by separate sections relating to each entertainment media product.

A. *Overview of Methodology*

The Commission, in consultation with the staff of RSW, developed the questionnaires for the telephone survey of parents and children. In total, RSW surveyed 763 parents by telephone: 256 parents about movies, 255 parents about music, and 252 parents about electronic games. In addition, the contractor surveyed 413 children: 136 children about movies, 138 about music, and 139 about electronic games.[16]

RSW obtained the sample of respondents for the survey using random-digit-dialing of working telephone exchanges across the U.S. To ensure adequate coverage of all 50 states and the District of Columbia, the sample was stratified by nine U.S. Census Bureau regions. This prevented over- or under-representing any part of the country. The response rate for the survey was 35.5%.

B. Questionnaire Format

Each questionnaire followed a similar format, and the detailed analyses below track this format.[17] Parents and children were first asked about the frequency of the child's usage of the medium, and about their roles in the product selection and purchase process. A series of questions about whether parents restrict the child's use of the medium, and the nature of any restrictions, followed. Next, respondents were asked about their awareness, knowledge, familiarity, and use of the rating system. Parents were asked about their satisfaction with the systems, about their concerns about violence, and about how well the rating or labeling system provides them information about violent content. Children were asked a series of questions about their experience at the retail level and whether they had attempted to obtain rated or labeled material. In addition, some questions were asked only about a specific industry. For example, the game and music questionnaires sought information about where music and games are obtained, and the movie and game questionnaires included questions testing parents' and children's knowledge of specific ratings.

C. General Findings

Although each of the surveys focused on a single product, the questionnaires followed a similar structure and had many common questions. As a result, generalizations can be made across all of the surveys, and comparisons can be made among the three products. This section describes generalizations for the parent surveys and children surveys, with key findings presented in Table 2. Specific industry findings are presented in later sections.

1. Parent surveys

Parents report substantial involvement in the selection and purchase of movies, games, and music. Parents report being more involved, however, in the selection and purchase of movies than of games and music.

Parents report placing greater restrictions on the viewing of movies than on the playing of games or the listening of music. Parents are particularly concerned with the violent content of games, with violence consistently emerging as the key reason for restricting their child's game-playing. In contrast, profanity is the parent's key concern with music. For movies, violence, sex, and (to a lesser degree) profanity are key concerns.

The survey results suggest that parents are aware of the three rating systems to varying degrees. Parents are most aware of the MPAA movie rating system and least aware of the newer

ESRB system for electronic games. Parents report using the ratings as guides to decide the appropriateness of entertainment products for their children and as signals to obtain more information about a product.

In addition, parents profess a high level of concern about the level of violence in movies, games, and music. Although a significant number of parents perceive that the ratings do a "good" or "excellent" job in informing them about violence, a substantial number note that the systems do only a "fair" or "poor" job in informing them about the level of violence in entertainment products.

Finally, the autonomy parents give to their children varies with the child's age. Parents give older children greater freedom in selecting and purchasing entertainment products than they do to younger children, and are less likely to restrict older children.

2. Children surveys

Parents and children vary in their perceptions about who plays the primary role in the selection and purchase of movies, music, and games. Children report that they play a greater role in selection/purchase of entertainment products; parents indicate that the children play a lesser role. Further, boys report having more freedom in the decision process, and parents suggest that they monitor boys more than girls. Consistent with parents' responses, children note that more restrictions are placed on their movie watching than on their game-playing and music listening activities.

Children reported that they watch movies, listen to music, and play games on a frequent basis. About half (49%) of children reported they see movies on home video at least once a week, see movies in the theater at least once or twice a month (59%), and listen to music at least five hours per week (61%). A majority (59%) of children, however, reported that they play electronic games less than five hours per week.[18]

Parents and children disagree about the extent to which the parents restrict the movies, music, and games the child can see, listen to, and play. Fewer children than parents report that the parents have restrictions in place.

Overall, children are more aware of and familiar with the three rating and advisory systems than are their parents. Children are most aware of movie ratings, and least aware of game ratings. Some children admitted that they had tried to circumvent ratings, but most of these children purported to have adult permission to do so.

A summary table of key results is below:

Table 2: Key Results of Parents and Children's Surveys Across Entertainment Products

Parents' Responses	Movies	Music	Games
Who selects the product?			
An adult	21	11	17
An adult and the child together	78	55	53
The child	2	34	29
Who purchases the product?			
An adult	60	34	38
An adult and the child together	36	37	45
The child	3	28	15
Do you restrict your child's use of the product?			
% saying "yes"	90	72	68
Are you aware of a rating system for the product?			
% saying "yes"	91	77	61
How often do you use the rating system?			
% of aware, familiar parents saying some, most, or all of the time	88	62	52
% of aware, familiar parents saying rarely or never	11	38	45
Are you satisfied with the rating system?			
% of aware, familiar parents saying somewhat or very satisfied	81	74	77
% of aware, familiar parents saying somewhat or very dissatisfied	17	14	9
How does the rating system do in informing you about violence?			
% of aware, familiar parents saying good or excellent	48	44	55
% of aware, familiar parents saying fair or poor	50	40	29

Children's Responses	Movies	Music	Games
Who selects the product?			
The parents	13	9	6
The parents and the child together	66	36	45
The child	21	55	48
Who purchases the product?			
The parents	54	20	31
The parents and the child together	33	40	41
The child	13	40	25
Does your parent restrict your use of the product?			
% saying "yes"	79	44	45
Are you aware of a rating system for the product?			
% saying "yes"	76	76	73
How often do you pay attention to the rating for the product?			
% of familiar children saying some, most, almost all, or all of the time	79	63	51

The following sections describe the results of each industry in greater detail.

D. Movie Survey Results: Detailed Analysis

1. Decision and purchase process

Parents appear to play an active role in their children's movie selection and purchase process. Most parents (78%) say that they and the child usually choose movies jointly, while 21%

of parents state that they usually make the decision themselves. [Q2a][19] Only 2% of parents indicate that the child usually decides which movies to see. [Q2a] Though children see themselves as playing a greater independent role in the decision process – 21% of children say they usually decide which movies to see – the majority of children (79%) say that adults are involved in the selection process, alone or jointly. [Q2a]

In addition, older children (for purposes of this survey, 14- to 16-year-olds) report that they are more likely to make the movie-selection decision on their own than are younger children (32% vs. 13%).[20] [Q2a] More younger children (11- to 13-year-olds) say that their parents make the decision alone than do older children (23% vs. 0%). Among older children, more boys than girls state that they make the decision alone (38% vs. 24%).

Parents report being even more involved in the actual purchase process. Some 96% of parents say that they, alone or with their child, usually purchase the movie tickets at the theater, movies at the store, or rent the videos. [Q2b] Adults are more likely to buy or rent a movie for younger children, with the process becoming more shared as children get older: 65% of parents of children 11-13 years of age said they usually purchase the movie themselves, versus 53% of parents of older children. [Q2b]

Of children surveyed, 13% say they usually make the purchase alone. [Q2b] Parents tend to be more involved in the purchase process with younger children: 59% of 11- to 13-year-olds say their parents make the purchase, contrasted with 47% of 14- to 16-year-olds. [Q2b] A substantial number of 14- to 16-year-olds (21%) note that they make the purchase alone. [Q2b] For older children, boys say that their parents take control more than girls: 56% of boys 14-16 say their parents rent or buy the movie or movie ticket, compared to 33% of girls. [Q2b] More girls than boys say they make the decision jointly with their parents (43% vs. 25%). [Q2b]

2. Parental restrictions

Nearly all parents (90%) report that they "restrict" the movies their children watch. [Q3a] By contrast, 79% of the children surveyed say their parents restrict. [Q3a] According to parents, the primary restrictions were based on the movie ratings (32% of those parents who restrict or 29% of all parents), while other restrictions focused on the specific movie content, such as violence (21% of parents who restrict) and sexual content (20%). [Q3b] The number of parents who say they restrict the movies their children watch was higher for those with younger children (95% vs. 83% for older children), with no major differences appearing in parents' responses based on the child's gender. [Q3a]

Similarly, when parents who restrict were asked how they decide which movies their child can see, the leading response was that parents base the decision on the movie's rating (20%, or 18% of the total sample). [Q3c] Other parents who restrict said that they preview the movie or watch while the child watches (19%), or read or watch reviews (13%). [Q3c] Other responses discussed the content of the movie, with parents mentioning violence, sex, and profanity. [Q3c] For parents who say they do restrict, it is difficult to determine how frequently or diligently they restrict. When asked specifically if they had refused a child's request to see a particular movie since the previous summer, 66% of parents who restrict said they had, with the major reasons being "sexual content" (24%), "violence" (19%), and "profanity" (10%). [Q3d, 3f] Others mentioned, more generally, that the content was inappropriate for a child (12%). [Q3f]

As noted above, fewer children than parents said that the parents restrict the movies they can see. [Q3a] In explaining the basis for the restrictions, children's comments are consistent with the parents' comments. As with their parents, the leading basis for restriction is the movie's rating (32%) or violent (13%) or sexual (7%) content. [Q3b] Likewise, when asked if there were some kinds of movies that their parents did not want them to watch, the children noted the same three factors: violence (19%), sexual content (19%), and the rating (17%). [Q3d]

More younger children noted having restrictions on the movies they watch than older children (91% vs. 62%). [Q3a] More girls noted having restrictions than boys (90% vs. 68%), with an especially large difference between older girls and older boys (81% vs. 50%). [Q3a] Younger children were also more likely than older children to note that there are movies that their parents do not want them to see (90% vs. 73%). [Q3c]

3. Awareness, knowledge, and use of the rating system

The vast majority of parents (91%) are aware of the rating system for movies, and a majority of those who are aware of the system felt "very familiar" (52%) or "moderately familiar" (35%) with the system. [Q4a, 4b] Of the total set of parents, 47% said they are "very familiar" with the ratings. [Q4b]

In an open-ended question asking their understanding of "what the rating system tells you about movies," parents mentioned specific ratings (17%), types of content such as violence (13%) or sex (14%), and age-appropriateness (12%).[21] [Q4c] When asked to name all the ratings they could think of, each one of the ratings besides NC-17 was named by a majority of those aware of the system, with higher recall of the ratings that might be described as more "adult" in content (77% of parents named the R rating, 74% mentioned the PG-13 rating, 63% mentioned the PG rating, and 58% named the G rating). [Q4d] However, when asked whether certain ratings were a part of the movie system, including two ratings that were not actually part of the system, a substantial number of parents (40%) mistakenly indicated that incorrect ratings (one of the electronic game ratings, "M or Mature," and a rating similar to the music industry advisory label, "PA or Parental Advisory") were part of the movie system, suggesting that these parents' familiarity with the system may be incomplete. [Q4e]

When asked the meaning of specific ratings, responses included age-related references, content-focused meanings, and a signaling function. [Q4f] Specifically, when parents were asked what the R rating means, many responses were age-related ("17- to 18-year-olds," (24%); "not for children/for adults," (17%)). [Q4f] There was also substantial content focus, especially related to profanity (16%), sex (16%) and violence (15%). [Q4f] Parents mentioned specific content less when asked about the two PG-related ratings (PG and PG-13): for the PG rating, the most frequent answer was that parents should preview or monitor the content (25%); for the PG-13 rating, the majority of parents view the rating as age-related (referring to children 12 or 13 years of age (40%)), and 10% thought it meant that the parent should preview the movie or watch with the child. [Q4f]

Children's responses essentially track the parents' responses. When asked what the different ratings mean, children saw the R rating as referring both to age restrictions ("17- to 18-year-olds" (27%) and "not for kids" (18%)) and to content issues (violence (18%), sexual content (13%), and profanity (10%)). [Q4e] Children viewed the PG-13 rating predominantly as referring to "12- and 13-year-olds" (40%) while they saw the PG designation as suggesting that "parents must accompany the child" (27%). [Q4e]

The majority (74%) of those parents claiming to be aware of the system say they use the ratings all or most of the time. [Q5a] (Overall, 66% of the entire sample claimed to use the ratings all or most of the time.) [Q4a, 5a] Among those who do use the rating, it is primarily used to restrict their child from watching movies with certain ratings (23%), as a signal to parents that they should preview the movie or watch it with the child (15%), or to get more information on the film (10%). [Q5c] Among the 10% of parents who say they "rarely" or "never" use the movie rating system, the leading reasons given were that the parent uses his or her own judgment to decide whether the movie is appropriate or that the parent trusts the child to choose movies that are appropriate for him or her. [Q5b] Parents of younger children use the ratings more than parents of older children (81% of parents of younger children use the ratings "most" or "all or nearly all of the time" versus 65% of parents of older children). [Q5a]

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Among those parents who were aware of the rating system, the majority thought the system was "very easy" (58%) or "moderately easy" (34%) to understand. [Q7a] Almost half of parents also reported that they are "somewhat satisfied" with the rating system (49%), while another third are "very satisfied." [Q7b] Satisfaction also varied by age, with parents of older children more likely to be "very satisfied" (40% vs. 27% for parents of younger children), and parents of younger children more likely to be "somewhat satisfied" (55% vs. 41%). [Q7b] Among those who were "somewhat" or "very satisfied" with the rating system, the leading reason for their satisfaction was a general one: either that parents are satisfied with the system, that the system is a good one, or that the system is good but not perfect (29%). [Q7c] Notably, 22% of "somewhat" or "very" satisfied parents made negative comments to describe their satisfaction, including 11% who said that the ratings are inconsistent or inaccurate, and another 10% who said the ratings are too general and do not specify the reasons for the ratings given. [Q7c] Likewise, when dissatisfied parents noted reasons for their dissatisfaction, the most frequent response (38%) was that the ratings were inconsistent or inaccurate, and another 19% thought that the rating should be more descriptive, such as specifying the reason for the rating. [Q7c] The sample size of "somewhat" or "very dissatisfied" parents, however, is small. [Q7c]

Turning to children's responses, the majority of children (76%) were aware of the movie rating system, and those aware of the system tended or claimed to be "very" or "somewhat" familiar (84%) with the ratings. [Q4a, 4b] More boys than girls (84% vs. 67%) said they were aware of the movie rating system, and more boys than girls said they are "very familiar" with the system (57% vs. 35%). [Q4a, 4b] Children were most familiar with the R, PG, and PG-13 designations, with more than 70% of aware children naming each of these ratings in response to an unaided recall question. [Q4c] Virtually every child asked correctly identified "R or Restricted" and "PG or Parental Guidance" as part of the movie rating system. [Q4d] However, as with parents, a sizable minority of children mistook ratings from other systems as part of the movie rating system, with a little under one third of the children, on average, identifying "T or Teen," "M or Mature," or "PA or Parental Advisory" as a movie rating. [Q4d]

Children also said that they pay attention to the movie ratings when deciding which movies to see: 79% say they pay attention to the ratings at least "some of the time," while 58% say they pay attention "most" or "all or almost all of the time." [Q5a] The most frequent way children said that the rating affects their choice is to control what they cannot watch (30%). [Q5b] A substantial number of children who said they pay attention to the rating, however, say that the rating has little effect on their movie choice (20%). [Q5b] Likewise, those who say they rarely or

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never pay attention to a movie's rating note that the ratings are not important (21%) and that they watch what appeals to them, regardless of the rating. [Q5c] More younger children say they pay attention to the ratings than do older children. [Q5a] In fact, 40% of older children say they rarely or never pay attention to the rating as compared with 6% of younger children. [Q5a]

4. Parental concerns about violence

When asked directly about their concern related to violence in the movies their children watch, the majority of parents (55%) were "very concerned," 37% were "moderately concerned," and only 9% of parents are "not at all" or "not very concerned." [Q8] Further, half of parents familiar with the system (50%) think the rating system does only a "fair" (34%) or "poor" (16%) job informing them about the level of violence in movies. [Q9]

5. Children's experiences with rating system enforcement at theaters

When asked about ways of circumventing restrictions on their movie watching, 20% of children noted that they had tried to see an R-rated movie in a movie theater without an adult. [Q6a] The majority of these youth noted that they had an adult's permission, that the adult knew the movie was R-rated when giving permission (every child asked said the parent knew), and that no one had tried to stop them from seeing the movie at the theater (75%, 18 of 24).[22] [Q6c, 6cc, 6d] Eight of 24 children asked said they have bought a ticket for a movie with another rating and gone to see an R-rated movie instead; four of 24 said they had asked someone else to buy a ticket for them out of concern that the cashier would not sell to them. [Q6f, 6g] Older children were more likely to try to see an R-rated movie without a parent. [Q6a]

Similarly, 17% of the children noted they had tried to rent or buy an R-rated movie on video without an adult. [Q7a] Older children, again, were more likely to try to rent or buy a movie without a parent. [Q7a] Of these 21 children, 17 said that they had adult permission, and each of the 17 said that the adult knew that the movie was R-rated. [Q7c, 7cc] Six of the 21 children noted that someone working at the store tried to stop them from renting or buying the movie, but all of them said they were still able to buy or rent the movie. [Q7d, 7e] Given the small sample for these questions (21 children), these data are only illustrative.

E. Music Survey Results: Detailed Analysis

1. Decision and purchase process

The survey revealed an interesting difference in how children and parents perceive their respective roles in the music selection and purchase process. More than half (55%) of children indicate that they usually decide on their own which music to purchase,[23] and 40% report that they purchase the music alone as well. [Q2a] Parents see their role in the process as more important. Only one third (34%) say that their child usually decides which CDs and cassettes to buy, and only 28% indicate that their child purchases music alone. [Q2b] Parents are much more likely to view the purchase decision as a joint process (55%) than are children (36%). [Q2b]

By comparison, children have greater autonomy to both select and purchase music than to select and purchase movies or electronic games. For games, 29% of parents responded that the child usually decides which game to buy or rent, and 15% responded that the child usually purchases or rents the games. [Q2a, 2b] For movies, 2% of parents responded that the child usually decides which movie to buy tickets to, buy, or rent, and 3% responded that the child alone usually purchases or rents the movie or buys the movie tickets. [Q2a, 2b] This greater autonomy is also reflected in the children's responses. For games, 48% respond that they usually decide and 25% usually make the purchase; for movies, 21% usually decide and 13% usually make the purchase. [Q2a, 2b]

The Internet is already beginning to have an impact on children's music listening in some ways. Most children (65%) noted that they have listened to music over the Internet, and 22% reported that they have downloaded music from the Internet. [Q1c, 1d] However, the Internet does not yet nearly rival stores as a source of music purchases: 91% of children buy music in stores, whereas 5% purchase from the Internet and 27% from record clubs. [Q1b]

2. Parental restrictions

This difference in parents' and children's perceptions also showed up when respondents were asked whether the parent restricts the music to which the child can listen. Less than half of the children (44%) report that their parents restrict the music they listen to, whereas 72% of parents say they do.[24] [Q3a] Parents mentioned profanity (28% of the overall sample) and sexual content (9% of the sample) as principal content concerns for the restriction. [Q3b] Violence was also mentioned as a concern by some respondents (6% of the sample), but was not as salient in parents' minds as profanity.[25] [Q3b] This does not mean that violence was not a concern for parents. The vast majority of parents noted that they were "very" or "moderately" concerned about

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the amount of violence in the music children listen to, with 63% "very concerned." [Q9] In addition to profanity, violence, and sex, some parents (13% of the sample) mentioned that they prohibited their children from listening to specific bands or music genres. [Q3b] Few respondents mentioned that they restricted their children's music based on the parental advisory label: only 9% of parents mentioned that they use the label (6% of the overall sample), and 4% of children whose parents restrict said that their parents use the label as the basis for restricting the child's music.[26] [Q3b]

Consistent with parents' responses, profanity was the leading concern mentioned by children (51%, or 22% of the total sample) as the basis for restricting the music to which they listen. [Q3b] Only 9% mentioned violence specifically. [Q3b] Less than one third (28%) of the total sample mentioned that there are some kinds of music that their parents do not want them to listen to; the restriction was principally based on either a specific music genre, album, or artist, or on profane content. [Q3c]

3. Awareness, knowledge, and use of the labeling system

About three quarters of parents (77%) (and children also, 76%) indicated that they were aware of the music advisory system. [Q4a] Parents of older children were more likely to be aware of the advisory system (82%) than were parents of younger children (72%). [Q4a] (Older children also were more aware than younger children (87% vs. 64%). [Q4a]) About half of the overall sample of parents surveyed claimed to be "very" or "moderately" familiar with the system. [Q4b] When it comes to using the system, 45% of the overall sample of parents reported using the advisory system at least "some of the time" in deciding what music to buy (or 62% of parents aware of and familiar with the system). [Q5a]

Parents who do not use the system or use it only rarely, cited a variety of reasons for non-use: some trusted their children to make appropriate choices on their own, some said their children did not like to listen to the types of music that the parent might have a problem with, and others simply did not believe that the advisory was important. [Q5b] Indeed, just over half of the children who are aware of the explicit-content advisory (51%) listen to "hardly any" explicit-content labeled music or do not listen to explicit-content labeled music at all. [Q4c] More than one third of children (36%), however, say that half or more of the music they listen to is labeled with the parental advisory label. [Q4c] Slightly less than a quarter of older children (21%) indicated that they listen to explicit-content labeled music "most or nearly all of the time," with 32% of older boys listening to labeled music "most or nearly all of the time." [Q4c] More than half of older children who are aware of the system (53%) rarely or never pay attention to the advisory label. [Q5a]

Of parents who do pay attention to the explicit-content label, many use it as a notice or warning to spur them to acquire more information about the music or to make sure that they listen to the music either before buying or with their child after buying. [Q5c] When asked how they would respond if their child came to them to ask about buying an explicit-content labeled album, one third (33%) of parents indicated they would not allow their child to purchase that music. [Q6]

As noted above, about half of parents claim to be "very" or "moderately" familiar with the system, and, of parents familiar with the system, three quarters (74%) are "very" or "somewhat" satisfied with the system. [Q4b, 8a] But it is not clear how well parents know the system. For example, most parents who claim to be familiar with the system (55%) believe that the advisory system has something to do with a child's age, even though the system has no recommended age limit (27% indicated it has nothing to do with age, and 13% were not sure). [Q7b] Although parents may have the impression that the advisory system is age-related simply because it is a "parental" advisory, it appears that parents are confused between the music system and the game and movie systems, which do provide specific age recommendations.

4. Parental concerns about violence

The vast majority of parents (89%) noted that they were "very" or "moderately" concerned about the amount of violence in the music children listen to, with 63% "very concerned." [Q9] Although 44% of parents familiar with the system said the system does a "good" or "excellent" job in informing them about the level of violence in music, almost as many (40%) felt that the system does only a "fair" or "poor" job. [Q10] In reality, the explicit-content label does not provide any information about how much violence a particular recording contains (or whether the recording contains violence at all) and the system does not provide content descriptors.[27]

5. Children's experiences with buying labeled music at stores

Children also answered questions about their experiences, if any, in purchasing labeled products. Few children reported that they attempted to buy an explicit-content labeled album when not accompanied by a parent or other adult (24 respondents, 22%), and of those that did, almost half (13 respondents, 54%) indicated that they had permission to do so. [Q6a, 6c] Here, again, the age of the children made a difference: 37% of older children reported that they have tried to buy labeled music without a parent. [Q6a] Most of the 24 children indicated that the parent knew the album was labeled (18 respondents, 75%) and did not mind that they had bought it (16 respondents, 67%). [Q6cc, 6g] Children were successful in purchasing explicit-content labeled music without a parent or other adult present, as every one of the children reported that they were able to buy the album (20 of 24 were able to buy without difficulty, and the remainder were still able to buy the album). [Q6e, 6f] The small number of children answering these questions counsels for caution in interpreting the results, but the results at least suggest that relatively few children claim to buy explicit-content labeled material without parental or other adult accompaniment and without adult permission. The data also suggest that children who do attempt to make an unaccompanied purchase are usually successful, as the mystery shopper survey data discussed in Part II, above, confirm.

F. Games Survey Results: Detailed Analysis

1. Decision and purchase process

Parents and children vary in their perceptions of their roles in selecting and purchasing electronic games.[28] Almost half (48%) of children asserted that they alone usually decide which games to buy or rent, though only 29% of parents reported that the child usually decides. [Q2a] Similar differences were found in responses to a question about purchasing or renting behavior: 25% of children reported that the child usually purchases or rents the games, as opposed to 15% of parents who said that the child usually made the purchase or rental. [Q2b]

Older children, as might be expected, are more independent in both selecting and purchasing games. Thirty-eight percent of parents of older children say the child usually makes the game selection alone compared to 21% of parents of younger children. [Q2a] The differences are more marked in the children's responses: 65% of older children say they usually decide alone, versus 30% for younger children, and 35% make the purchase alone, versus 15% for younger children. [Q2a, 2b] In addition, parents' and children's responses demonstrate gender differences, with more boys (and parents of boys) saying they usually decide and purchase on their own. [Q2a, 2b]

Whether judging by children's or parent's reports, it is clear that most parents are able to play a watchdog role when they choose to do so. According to the children, almost three-quarters of parents (72%) are usually involved in the process, if only to purchase the game. [Q2b] According to parents' responses, even more parents (83%) are involved in the actual purchase transaction: 38% reported that they usually purchase or rent the games, and another 45% of parents do so together with the child. [Q2b] This level of parental involvement, either at the point of selection or purchase, means that most parents have the opportunity to review rating information or to check the product packaging to determine whether they approve of the game's content.[29]

Whether children are buying M-rated games alone or with their parents, it is clear that they play M-rated games. Of 93 children who specified at least one of their current favorite games in response to an open-ended question (some respondents did not name any game as a favorite, or named a favorite genre instead of a particular game), 22 (or 24%) named a game that is M rated. [Q2d] Other children might play M-rated games but did not name an M-rated game as one of their three current favorites. Of those parents who attempted to name their child's current favorite game (comparing parents with children in the same household), their selection matched one of the child's three favorite games 30 out of 36 times. [Q2c] Although this relatively high accuracy rate would suggest that parents are very familiar with their children's game-playing habits, most parents did not name any game as their child's favorite. [Q2c]

2. Parental restrictions

Parents and children also disagree whether parents restrict the games children play. While 45% of children report that their parents restricted the electronic games the child could play, 68% of parents say that they restrict. [Q3a] As with selection and purchase behavior, age makes a difference: parents are more likely to restrict younger children, according to both parents' and children's responses. For example, 63% of younger children say their parents restrict the games they can play, but only 27% of older children say their parents restrict. [Q3a]

Parents and children do agree on one thing: violence is by far the main reason that parents restrict the games their children play, with about half of parents and children naming violence as the basis for restriction. [Q3b] Slightly under half of parents (43%) had told their child, since the beginning of summer 1999, that he or she could not play a particular game. [Q3d] By far, violence or violent content was the leading reason (41%) given by those parents who told their children not to play a particular game [Q3f] Of those children who said that there are kinds of games that their parents do not want them to play, 41% said their parents do not want them to play violent games. [Q3d]

When asked how they decide which games their child can play, some parents (14%) responded that they take steps to test a game before purchase, such as by trying to play the game before buying, or by supervising their child's usage after purchase. [Q3c] Others (also 14%) mentioned that they look for violent content. [Q3c] Parents also use other techniques. They look at the game packaging, such as the graphics, to get a sense of the content (11%); check the game's rating (9%); and obtain information about the game from other parents, salespeople, their child, or media sources such as magazines (9%). [Q3c]

3. Awareness, knowledge, and use of the rating system

Although most parents care about violent content in games, it is less clear that they use the game rating system to learn about a game's violent content. Only three in five parents (61%) say they are aware that the game rating system exists (as opposed to 73% of children). [Q4a] Of those aware parents, 8% say they are not at all familiar with the rating system. [Q4b] Of the 53% of parents who claim to be aware of the system and at least slightly familiar with it, 45% rarely or never use the system. [Q5a] Most older children's parents who are familiar with the rating system "rarely" or "never" use the system (58%). [Q5a] By contrast, 32% of younger children's parents who are familiar with the system say they "rarely" or "never" use the ratings. [Q5a] Overall, only 24% of parents surveyed are at least slightly familiar with the system and use it at least some of the time. [Q5a, 5b] This low usage rate may be due to the system's being relatively new. Few parents (4%) named the game's rating in response to an open-ended question about their restrictions on which games their child can play, and 9% mentioned the rating when explaining how they decide which games their child can play.[30] [Q3b, 3c]

Even among those parents who said they are aware of and at least slightly familiar with the rating system, little more than half (52%) correctly indicated that the rating system provides both an age rating as well as descriptors indicating a game's content.[31] [Q4cc] Three in five could not name a single one of the game ratings unaided.[32] [Q4d] When asked whether specific ratings (including two ratings that were not actually part of the rating system) were part of the game rating system, these parents were essentially unable to distinguish the ratings that are part of the system from the "foils" or false positives.[33] [Q4e] These responses indicate that parents either do not use the system enough to be familiar with it or at least are confused about the various rating systems. Children were more familiar with the ratings than their parents: more children were able to name at least one game rating unaided, and approximately one third of the children in the overall sample were able to correctly identify the game ratings, after subtracting those children who incorrectly identified a false positive.[34] [Q4d]

Parents respond to ratings information in a variety of ways. Parents who claim to be aware of and familiar with the rating system were asked what they would do if their child wanted to play an "M or Mature" rated game. Of that group of parents, about one in five (21%) said they would not allow the child to play the game because of the rating. [Q6] Almost as many (20%) indicated that they would either test the game themselves prior to purchase or at least monitor the child's play so that they could get a sense of the game's content. [Q6] Other parents noted that they would discuss the game with the child to assess whether it was appropriate (5%), while some would allow the child to play (6%). [Q6]

Parents who report using the system indicated that they use it in a variety of ways. Some use the rating itself as a guide to assess whether the game's content is appropriate for their child. [Q5c] Others use the rating to spur them to seek out additional information from other sources or to check the other information on the game box more carefully. [Q5c] Other parents say they preview the games themselves, or they supervise the child's play after purchasing if the rating indicates that the game may be inappropriate. [Q5c] Some will not purchase games rated Teen or Mature. [Q5c]

Parents who do not use the system gave a variety of responses, as well. Some say they do not use the rating because they check out the game themselves or supervise the child's play. [Q5b] Others say the child's game preferences are such that the content of the games selected is not a concern or that they trust their child to exercise his or her own judgment in selecting appropriate games. [Q5b]

A large majority of parents who said that they were at least slightly familiar with the ratings reported that the ratings were "moderately" or "very easy" to understand (77%). [Q7a] A similarly large majority of these familiar parents reported that they were at least "somewhat satisfied" with the ratings (77%). [Q7b]

4. Parental concerns about violence

Five of six (84%) parents are "moderately" or "very concerned" about the amount of violence in some electronic games. [Q8] About half of parents familiar with the system (55%) say that the rating system does a "good" or "excellent" job of informing them about the level of violence in games. [Q9] However, 29% said the system does only a "fair" or "poor" job.[35] [Q9] As noted above, parents' responses to the questions designed to gauge their actual awareness and use of the system suggest that most parents either do not know about or do not use the system.[36]

5. Children's experiences with rating system enforcement at stores

Interviewers also asked children a series of questions about their experiences with enforcement of the rating system in retail stores. Children were asked whether they had, since the

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beginning of the previous summer, ever tried to buy an M-rated game without a parent or other adult. [Q6a] Only 16% of children said they had tried to buy or play an M-rated game – with older children more likely to have made the attempt than younger children. [Q6a] Of the 17 children who claimed to have attempted to buy or play an M-rated game, nine said they had permission to do so (although the parent was not always aware that the game was Mature-rated when asked). [Q6c] Children reported that store employees tried to stop the unaccompanied child from buying the Mature-rated game in three of 17 cases, and they were successful each time in preventing the sale.[37] [Q6d, 6e] Only one of the 17 children had asked someone to buy or rent a game for them out of concern that they would be checked because of their age, and only 8% of the children surveyed said they had played an M-rated game on an Internet gaming Web site without a parent's permission.[38] [Q6f, 6g]

IV. CONCLUSION

These data are helpful in resolving questions about how the entertainment media rating and advisory systems are applied in practice. The mystery shopper survey demonstrates that in general parents cannot rely on retailers or theaters to restrict children's access to material that may be inappropriate for them. The parent-child survey provides a window on how parents and children use – or do not use – the rating and advisory systems, and on how they purchase entertainment products. The data also show considerable differences between parents' and children's responses on a whole range of issues. The findings should help contribute to a fuller understanding of the ways that parents and children make use of the rating and advisory information designed for their benefit.

Attachment A to Appendix F
Sample Parent-Child Survey

Taking the parents' movie questionnaire as an example, each survey began with questions about the frequency of use of the medium and questions about the parents' and children's respective roles at point of sale:

1a. Since the beginning of last summer, on average, about how often did (Child's name) go to the movie theater to see a movie?

1b. Since the beginning of last summer, on average, about how often does (Child's name) watch movies on home video?

2a. For the movies that (Child's name) watches, who usually **decides** which movies to buy tickets to, to buy, or to rent? Is it usually the child, an adult, or an adult and the child together?

2b. For the movies that (Child's name) watches, who usually **purchases or rents** the movies or movie tickets? The child, an adult, or an adult and the child together?

The survey then turned to the parent's restrictions on media use:

3a. Do you or don't you restrict which movies (Child's name) watches?

If the parent does restrict, the parent was asked about the restrictions, with questions that did not refer to the rating system:

3b. What are the restrictions?

3c. How do you decide which movies (Child's name) can see? (PROBE: And what do you look for?)

3d. Since the beginning of last summer, have you told (Child's name) that he (or she) cannot see a particular movie on home video or in a movie theater?

If so, the parent was asked:

3e. If you recall, what was the name of the movie that you told (Child's name) not to see?

3f. Why didn't you want (Child's name) to see that movie? (PROBE: Anything else?)

A series of questions about the parent's awareness, knowledge, and use of the system followed:

4a. Are you aware whether there is a rating system to help parents decide what movies they do and do not want their children to see?

If the parent was aware of the rating system, the parent was then asked:

4b. How familiar would you say you are with the rating system for movies?

Parents who were not aware of the system, or not familiar with the system, were asked only one additional question (question 8 below). Parents who were aware and at least somewhat familiar were tested about their knowledge of the system, with both unaided and aided recall questions:

4c. What is your understanding of what the rating system tells you about movies? PROBE: Is there anything else?

4d. In thinking about movie ratings, please tell me all the movie ratings you can think of.

4e. Now I am going to read you some ratings that may or may not be used to rate movies; you may have named one or more of these already, that is OK. For each one, please tell me whether the rating is part of the movie rating system, not part of the system, or if you don't know.

4f. Now I am going to mention some ratings. For each one, please tell me what you think the rating means. How about R or "Restricted..." PG or "Parental Guidance..." and PG-13 or "Parental Guidance-13...."?

Parents were asked about their usage of the system:

5a. Do you use the movie's rating when (Child's name) wants to watch a movie all or nearly all of the time, most of the time, some of the time, rarely, or never?

To follow up, parents who rarely or never used the system were asked why they do not use the system. Parents who do use the system were asked how they use it. Parents were then given a hypothetical situation and asked how they would respond:

6. Imagine if (Child's name) comes to you and says that he/she wants to see a movie, which happens to be R-rated, what would you do? PROBE: Anything else?

Parents were asked whether, when deciding whether their child should or should not see a movie, the ratings are "very easy," "moderately easy," "not very easy," or "not at all easy" to understand (7a). They were also asked whether they are satisfied with the rating system in providing them with information about the movies their child wants to see, and to explain why they are satisfied or dissatisfied.

Parents were then asked directly whether they are concerned about violent content:

8. Parents differ in their opinions about the violent content of some movies that their children may be exposed to. Some are concerned, while others are not concerned about the violent content in some movies that their children see. Generally, are you very concerned, moderately concerned, not very concerned, or not at all concerned about the amount of violence in the movies children watch?

Parents who said that they were aware of and familiar with the system were then asked:

9. Does the rating system do an excellent, good, fair, or poor job in informing you about the level of *violence* in movies?

In the children's movie survey, the questions about frequency of use and role in the decision-making and purchase process were the same as in the parents' survey. Children were also asked whether their parents restrict which movies the child can see in a theater or buy or rent for home and, if so, what the restrictions are. Children who said that their parents do restrict the movies the child can see were then asked additional questions about the restrictions:

3c. Generally, are there some kinds of movies that your parents don't want you to watch?

3d. What are the kinds of movies your parents don't want you to watch? (PROBE Any other kinds?)

The questions about awareness, familiarity, knowledge, and use of the system tracked the parent's survey, although instead of asking how the children "use" the rating they were asked whether they "pay attention" to the rating. They were then asked how the movie's rating affects their choice of what movie to see, or if they rarely or never pay attention to the rating, why they rarely or never pay attention to the movie's rating. Children were then asked a series of questions about the enforcement of the rating system at theaters and stores:

> 6a. Since the beginning of last summer, have you tried to see an R-rated movie at a movie theater without a parent or other adult?

If they had tried to see an R-rated movie at a theater without a parent or other adult since the beginning of the previous summer, they were asked:

> 6b. What was the name of the last R-rated movie you tried to see at a theater without a parent or other adult?
>
> 6c. Did you have your parent's or other adult's permission to see that movie?

If they had permission to see the movie, they were also asked:

> 6cc. Did your parent or other adult know that the movie was R-rated?

All children who had tried to see an R-rated movie in the last year without a parent or other adult were then asked:

> 6d. Did anyone working at the theater try to stop you from seeing the movie?

For those who said someone working at the theater had tried to stop them from seeing the movie, they were asked an additional question:

> 6e. Were you still able to see that movie in a theater without your parent or other adult?

All children who had tried to see an R-rated movie in the last year without a parent or other adult were then asked:

6f. Since the beginning of last summer, have you bought a ticket for a G, PG, or PG-13 rated movie at a movie theater and gone into an R-rated movie instead?

6g. Since the beginning of last summer, have you asked someone to buy a movie ticket for you because you were concerned the cashier would not sell it to you because of your age?

Comparable questions were asked about the child's experience trying to rent or buy an R-rated movie on home video without a parent or other adult.

Attachment B to Appendix F
Tables of Mystery Shopper Survey Data

1. Table of Mystery Shopper Results by Age of Shopper

Was child able to make purchase?

a. Movie Theaters

Frequency/ Col Pct	13 years old	14 years old	15 years old	16 years old	Total
No	56 71%	78 62%	46 46%	32 36%	212
Yes	23 29%	48 38%	54 54%	58 64%	183
Total	79	126	100	90	395

b. Music Stores

Frequency/ Col Pct	13 years old	14 years old	15 years old	16 years old	Total
No	24 30%	12 9%	15 16%	5 6%	56
Yes	55 70%	115 91%	79 84%	78 94%	327
Total	79	127	94	83	383

c. Electronic Game Stores

Frequency/Col Pct	13 years old	14 years old	15 years old	16 years old	Total
No	18 24%	10 8%	19 20%	12 15%	59
Yes	57 76%	119 92%	77 80%	68 85%	321
Total	75	129	96	80	380

Was the child asked his/her age?

a. Movie Theaters

Frequency/Col Pct	13 years old	14 years old	15 years old	16 years old	Total
No	31 39%	53 42%	61 61%	59 66%	204
Yes	48 61%	73 58%	39 39%	31 34%	191
Total	79	126	100	90	395

b. Music Stores

Frequency/ Col Pct	13 years old	14 years old	15 years old	16 years old	Total
No	55 70%	112 88%	77 82%	77 93%	321
Yes	24 30%	15 12%	17 18%	6 7%	62
Total	79	127	94	83	383

c. Electronic Game Stores

Frequency/Col Pct	13 years old	14 years old	15 years old	16 years old	Total
No	57 76%	121 94%	76 79%	68 85%	322
Yes	18 24%	8 6%	20 21%	12 15%	58
Total	75	129	96	80	380

2. Table of Mystery Shopper Results by Gender

Was child able to make purchase?

	Males	Females	P-Value
Movies			
Respondents	205	190	
Respondents Able to Purchase	85	98	
Percent Able to Purchase	41%	52%	0.04
Music			
Respondents	197	186	
Respondents Able to Purchase	165	162	
Percent Able to Purchase	84%	87%	0.36
Games			
Respondents	204	176	
Respondents Able to Purchase	175	146	
Percent Able to Purchase	86%	83%	0.45

Was child asked his/her age?

	Males	Females	P-Value
Movies			
Respondents	205	190	
Respondents Who Were Asked Their Age	110	81	
Percent Who Were Asked Their Age	54%	43%	0.03
Music			
Respondents	197	186	
Respondents Who Were Asked Their Age	31	31	
Percent Who Were Asked Their Age	16%	17%	0.81
Games			
Respondents	204	176	
Respondents Who Were Asked Their Age	30	28	
Percent Who Were Asked Their Age	15%	16%	0.75

3. Table of Purchase Behavior by “Major” Chain vs. Non-“major” Chain

Was the child able to purchase the item?			
Type of Store or Theater	Movies	Music	Games
Non-Major (in %)	50	78	77
Major Chain (in %)	45	89	88
P-Value	0.31	0.01	0.01
Was the child asked his/her age?			
Type of Store or Theater	Movies	Music	Games
Non-Major (in %)	46	22	22
Major Chain (in %)	49	13	12
P-Value	0.53	0.02	0.01

ENDNOTES

1. Some type of retailer enforcement currently is an element or goal only of the movie and electronic game industry self-regulatory systems. The music recording industry has not required that stores restrict sales of explicit-content labeled albums to children under a certain age, instead emphasizing that such a decision should be left to the retailers' discretion. Nevertheless, some music recording retailers have indicated that their policy is not to sell such recordings to children. *See* Report Section V.C.

2. The "mystery shopping" industry is one that employs individuals to visit an establishment in an anonymous way, just like any other customer. "Mystery shoppers," so-called because the shoppers' role is not declared to employees at the establishment, may be hired by a company to provide an external check on the company's customer service, for example.

3. Allison Foreman, *5 Theaters Let Boy, 16, into R Films*, The Capital, Aug. 1, 1999, at A1.

4. Allison Foreman, *Four Theaters Fail a Second Underage Test*, The Capital, Sept. 5, 1999, at A1.

5. Trip Gabriel, *The Ratings Game at the Cineplex*, N.Y. Times, Feb. 18, 1996, at B1.

6. David Hanners, *Informal Survey Finds Video Game Ratings Ignored*, Saint Paul Pioneer Press, June 12, 1999.

7. Trey Graham, *Despite ID Policy, R Rating Rarely Bars Teens from Screens*, USA Today, June 16, 1999, at 4D.

8. Shoppers were initially assigned a location to shop based on 1999 telephone data and industrial classification codes for businesses in each industry in the shoppers' general geographic area, using the first three digits of the shopper's zip code. In many cases, these assigned locations were too distant from the shopper, had closed, or did not sell the product. Therefore, after more than 20% of the shops were completed based on these random assignments, shoppers were informed that they could select the location to shop.

Data from both assigned and unassigned shoppers are compared here. For the question that related to whether the parent noticed an age advisory, only for the movie industry does there appear to be a difference in response rate between shoppers who went to assigned vendors and shoppers who chose vendors. For movies, shoppers who were assigned a vendor observed the advisory more often than those who selected a theater (62%-51%, $p= 0.048$). For music and game vendors the effect was not significant ($p>0.05$).

For all three products, the group that went to assigned stores was able to complete the purchase a higher percentage of the time than the group that chose a vendor. This difference was statistically significant for music (92%-82%) ($p<0.013$) and games (92%-82%) ($p<0.016$) but not for movies (50%-45%, $p= 0.458$). Children in the group that chose the vendor were asked their age in a higher percentage of cases than the group that shopped at assigned vendors. For music and games, this difference was significant ($p<0.044$): music (11% (assigned a store) vs. 19%

(chose store)) and games (7%-18%). For movies the difference was not significant (47% vs. 49%, p= 0.671).

9. The contractor required shoppers to submit proof of age and verification for completed purchases by submission of receipt; if they were not able to make a purchase, the shoppers were to buy another item at the store to get a receipt, except in cases where the shopper went to a movie theater showing only one R-rated movie. Shoppers did not submit receipts in every case: some indicated that they were required to provide the receipt to the store in order to return the item, as parents were instructed that the purchased items should be returned if the purchase attempt was successful. Still, a majority of shoppers did submit receipts verifying that they had completed the shop: all told, more than 80% of the shops were documented by receipts either for the rated item purchased or for another item purchased at that location. Looking only at shops for which receipts were submitted, shoppers submitted receipts documenting a successfully completed purchase of the rated product or theater admission for 771 of the 1,158 total shops.

10. Percentages cited in this appendix have been rounded. Accordingly, certain figures may add up to slightly more or less than 100% due to rounding.

11. Parents completed the questionnaire on the Web site after getting the information (*e.g.*, whether the child was able to purchase) from the child.

12. Review of the mystery shopper data indicated that some shoppers mistakenly purchased edited or "clean" versions of explicit-content labeled recordings, specifically at Wal-Mart and Kmart, despite the instruction that they purchase explicit-content labeled recordings. The product identification numbers (or SKUs) for all other receipts with universal SKU data were rechecked, confirming that the albums selected were the explicit-labeled versions. The results from the Kmart and Wal-Mart purchases of clean versions of explicit albums are not included in the data reported here.

13. In the Parent-Child Survey conducted on behalf of the Commission, eight of 24 children who said that they had tried to see an R-rated movie at a movie theater without a parent or other adult since the beginning of the previous summer had bought a ticket for a G, PG, or PG-13 movie and then gone to an R-rated movie instead, while four had asked someone else to buy them a ticket out of concern that the theater would not sell him or her the ticket. *See infra* Section III.D.5.

14. Note that all differences cited in the analysis of the mystery shopper data are statistically significant differences, with p<0.05.

15. Data table for comparisons in this section are presented in Attachment B to this Appendix.

16. The data cited in the text are based on analyses of those subjects for which full age and sex information was available. There were 93 subjects, accounting for 8% of the total number of subjects surveyed, that were dropped because of missing age or sex information. These missing observations accounted for a low of 5% of subjects in the parents' movie survey to a high of 13% in the children's music survey. Analyses conducted by FTC staff determined that the exclusion of these incomplete observations did not materially alter the results cited in the text.

Households were screened for the presence of an age-eligible child, as well as for the child's use of movies, video and personal computer games, and music such as albums, cassettes, or compact discs. A household was considered to be eligible for the survey if the child used any one of the three media (although parents were not questioned about a particular medium if the parent indicated that the child did not use that medium). Households were interviewed about one product (*i.e.*, movies, music, or games) only.

Following research industry standards, RSW made up to four calls to each household to screen for eligibility and to obtain participation. When necessary, RSW made up to an additional two calls to the qualified household to conduct the interview with the parent. Once RSW completed an interview with a parent, it attempted an interview with the child in that household. In households where more than one child between the ages of 11 and 16 years of age resided, a random selection method, asking for the child between 11 and 16 who had the most recent birthday, was used to select a child for inclusion in the study. In the attempt to reach the specified child within the household, RSW made up to four additional calls during both day and evening hours. In some cases, it was necessary to conduct interviews with children in households when no parent interview was conducted. In these cases, RSW contacted the parent, collected demographic information for the household, and secured permission to interview the child. RSW conducted 18 of the child-game interviews, 46 of the child-music interviews, and 38 of the child-movie interviews in households where it could not obtain full parent interviews. Telephone interviews were conducted between May 10, 2000 and June 8, 2000.

RSW checked the data from completed interviews for consistency and coded responses to open-ended questions into categories that summarized the most frequently mentioned responses. RSW submitted preliminary codes and examples of the associated verbatim responses to the Commission for comment and approval. RSW then coded open-end responses into the approved response categories and tabulated them as part of the overall data set.

17. The complete questionnaires and survey results are available at the Commission's Web site, www.ftc.gov.

18. These rates are generally consistent with those reported by other surveys that have measured children's own reports of their entertainment media usage. However, the Commission's estimates may be understated, as its study was based on children's retrospective self-reports of their behavior. The present survey was not designed to measure actual frequency rates. Based on a comparison of children's self-reports with parental estimates, parents tend to underestimate the frequency with which children use these entertainment products.

19. Citation is to relevant question(s) on questionnaire for the entertainment product discussed, for parents' or children's survey based on response given.

20. Differences between responses, such as comparisons between boys' and girls' responses or between older and younger children's responses, are noted only when the difference between the response rates is 10% or greater. In many, but not necessarily all, cases, cited differences will be statistically significant at the 0.05 level.

21. A large minority of respondents (37% of those who claimed to be aware of the system) said they did not know or refused to answer the question. For the open-ended survey questions, there were a substantial minority of parents, usually in the 30-40% range for a given question, who either refused to answer the questions or responded that they did not know or did not remember. This may indicate a sensitivity to questions about parents' roles in restricting or monitoring their children's media usage, or a lack of knowledge about the rating systems that made parents less willing to articulate their answers. Although it is difficult to know the precise reasons for this phenomenon, two points must be noted. One is that substantially fewer children in the survey for each industry responded that they did not know an answer or refused to answer. Also, even among parents' responses, the rate of refusals varied depending on the particular industry. For example, most of the parents who participated in the music survey indicated that they did not know an answer, but did not refuse to answer. For the game survey, however, more parents refused to answer particular questions as opposed to saying that they did not know.

22. The small sample size for these questions counsels caution in interpreting these results. Of the six children who said someone at the theater did try to stop them from seeing the movie, three were able to see the movie in the theater subsequently. [Q6e] On enforcement of the age restrictions in the theater, ***compare*** the Mystery Shopper survey, ***supra*** Part II (indicating that 46% of children participating in the survey were able to purchase tickets to R-rated movies at theaters).

23. As might be expected, more older children (14- to 16-year-olds) than younger children (11- to 13-year-olds) indicate that they usually make the selection (74% vs. 36%). [Q2a] More older children than younger children also indicate that they usually make the purchase (61% to 19%). [Q2b] Parents' responses also reflect this age difference. Almost half of parents of older children (48%) said that their child usually makes the decision to select music, and 43% said that the child usually makes the purchase on his or her own. [Q2a, 2b]

Also, children from non-married households were more likely to report that they made the decision (68%) than children from married households (49%). [Q2a] This result was also reflected in the purchase data (49% of children in non-married households reported that they purchase on their own, as opposed to 36% of children in married households). [Q2b] Parents' responses reflected this differential too, with fewer respondents from married households indicating that the child usually makes the purchase than non-married households. Small cell sizes for the non-married/married household comparisons for some questions advise caution in interpreting these results.

24. The married/nonmarried household distinction also appears when looking at whether parents restrict their children's music: both children's and parents' reports vary depending on whether the household is a married household, with fewer parents restricting in nonmarried households. [Q3a] The age distinction appears as well: 55% of younger children said their parents restrict, while only 33% of older children said they restrict. [Q3a] More parents with older children responded that they do not restrict (39% vs. 14%). [Q3a]

25. When asked in another question why they had not wanted their child to listen to a particular album, artist, or genre, parents again mentioned profanity as the leading response. [Q3f]

26. When asked, further, how they decide which music the child can listen to, parents' predominant response (30%) was that they either try to listen to the music before buying or listen to the music with the child to keep a check on the content. [Q3c] Again, some parents mentioned that they use the explicit-content label (9%) or inspect information on the music packaging, such as song titles or lyrics, or the packaging graphics (4%). [Q3c] When parents who had told their child that he or she could not listen to a particular album, artist, or type of music were asked why they did not want their child to listen to the album, only 2% mentioned the explicit-content label. [Q3f]

27. *See* Report Section IV.A.

28. For purposes of the survey, the term "video games" was inclusively defined to include handheld games, console games, and computer games.

29. Note, however, that parents may have more control over children's purchases or rentals at retail stores than other ways that children obtain games. While 68% of children say they buy games at the store and 28% say they rent games, 34% borrow games and 17% buy, play, or download games online. [Q1c] Eighteen percent have downloaded game demos online, allowing them to play at least a portion of a game.

30. Only two of 49 children whose parents restrict their game playing specifically mentioned, in an open-ended question, that the restriction is based on the rating. [Q3b]

31. The remainder said that the system had only an age component, only a content descriptor component, or said they did not know.

32. The rating most frequently mentioned, Teen, was recalled by 18% of parents. Children did considerably better in demonstrating unaided recall of the ratings: only 31% were unable to name any of the ratings unaided, and 47% were able to name the Teen rating (again, the best recalled rating) unaided. [Q4c]

33. Based on the average of the two false positives, parents were more likely to pick the false positives (a rating similar to the music advisory label, "PA or Parental Advisory" (57%), and a movie rating, "PG or Parental Guidance" (40%)) than two out of three of the actual rating categories ("M or Mature" (59%), "E or Everyone" (45%), and "T or Teen" (45%)). [Q4e]

34. A recent Annenberg Public Policy Center survey similarly indicates that children are more familiar with the television rating system than their parents. *See* Emory H. Woodard, IV & Natalia Gridina, *Media in the Home 2000: The Fifth Annual Survey of Parents and Children* [hereinafter *Media in the Home 2000*] 32-35 (Annenberg Pub. Policy Ctr. U. Pennsylvania 2000).

35. A Gallup survey provides a different view of whether people are satisfied with the level of information provided by the rating systems about violence levels. Most people reported that the systems do not provide adults with enough information about the violent content in entertainment to make decisions about what is appropriate for children: 58% thought the movie rating system did not provide enough information about the violent content in movies, and 74% thought that the music and game systems did not provide enough information. David W. Moore, "*Public:*

Current Efforts to Control Exposure of Children to Violent Entertainment Are Not Enough," Gallup News Service (June 23, 1999) (reporting results of Gallup poll of 500 respondents conducted June 11, 1999), www.gallup.com/poll/releases/pr990623.asp (visited Aug. 16, 2000).

36. The *Media in the Home 2000* survey reports that 49% of parents use the video and computer game rating system, as opposed to 80% who use the movie rating system and 45% who use the music system. *Media in the Home 2000, supra* note 35, at 36.

37. Though the sample size here is small, these figures are consistent with the data from the mystery shopper survey conducted on behalf of the Commission, *supra*.

38. The data indicate that many children do not play games on Internet gaming Web sites, at least at the present. About half (47%) of children said they never play games on Internet gaming Web sites, and another 43% say they play on those sites less than five hours a week. [Q1b] The 8% of children who have played a Mature-rated game online without permission may be compared to the 17% of children who said that they currently buy, play, or download games online. [Q1c, 6g]

Appendix G

THIRD-PARTY VIEWS AND SUGGESTIONS FOR IMPROVEMENT OF ENTERTAINMENT MEDIA RATING AND LABELING SYSTEMS

I. INTRODUCTION

The Commission sought information from many sources to conduct its study of the structure and effectiveness of the entertainment industries' self-regulatory rating and labeling programs.[1] Those sources included documents and other materials submitted by individual companies and industry trade associations, as well as information obtained in meetings and discussions. Similarly, the Commission sought the views of public health organizations, academics, parent and consumer advocacy groups, and other interested third parties. Many of these third parties have criticized one or more aspects of the existing self-regulatory systems and have made recommendations for their improvement;[2] some praise has been offered for the electronic games' industry's rating system.[3] In addition, legislators[4] and other public figures[5] have suggested changes to one or all of the entertainment industries' marketing practices and self-regulatory efforts. Although the Commission is not endorsing the third-party views presented in this Appendix, it believes that constructive criticism of the self-regulatory systems may be of use to Congress and others in considering the policy questions that arise in this area.

II. THIRD-PARTY VIEWS OF THE MOTION PICTURE INDUSTRY SELF-REGULATORY SYSTEM

Perhaps due to its longevity and visibility, the motion picture rating system has been the subject of more written commentary than the other rating and labeling systems analyzed in this Report. Critics have focused on the failure of the CARA/MPAA system,[6] unlike the rating systems for electronic games and television, to include content descriptors (*e.g.*, V for violence, L for language) as part of the rating.[7] As a result, the system has been challenged for not providing sufficient information to allow parents and other consumers to make informed judgments about the violent content in motion pictures.[8] Systems with content descriptors have been recommended for at least three reasons: (1) descriptive ratings may be more consistently applied by raters, since the level of discretion is lower and simpler to apply; (2) descriptive ratings provide more specific information and allow disparate consumers to make choices appropriate to their values and viewing preferences;[9] and (3) descriptive ratings may deter those children who are attracted to movies rated PG-13 or R.[10]

Other suggestions for revising the movie rating system focus on the specific rating groupings. Several sources have suggested reorganizing the age divisions of the current ratings by designating movies to be appropriate for children either under, or over, age 7 or 8.[11] Child development experts, educators, and advocacy groups point out that age 7 or 8 is a dividing point in children's perception of reality, and younger children are very likely to believe that media violence is real.[12] For that reason, they say, PG-rated material currently rated as potentially appropriate for all children under 13 (subject to parental guidance) may not necessarily be suitable for children under age 7.[13] Other suggestions include adding a new "A" rating between "R" and "NC-17" to signify adult material that – while strictly for adults – is not pornographic,[14] and eliminating the "NC-17" category entirely while adding descriptors for violence, language, drugs, etc. as well as qualifiers *(e.g.*, "M" for mild and "E" for extreme) to the ratings.[15]

The rating process itself also is controversial.[16] The identities of the members of the CARA/MPAA rating board are kept secret; some critics claim the lack of public accountability undermines the legitimacy of the movie rating process.[17] The MPAA and CARA counter that the anonymity of the rating board protects the members from outside pressure.[18] Some commentators have suggested that viewing the 600 to 700 movies per year that the rating board rates may desensitize the raters to what would be considered offensive or appropriate by most parents, with the result that movies receive less restrictive ratings than they should.[19] Others say that the rating board should include child development experts, educators, and media research professionals rather than just parents.[20] The movie rating system has also been criticized for focusing on the amount or explicitness of violence in a film, while not taking into account the context of the portrayals.[21]

III. THIRD-PARTY VIEWS OF THE MUSIC INDUSTRY PARENTAL ADVISORY LABELING PROGRAM

Due to the relative lack of rules and standards in the Recording Industry Association of America's ("RIAA") parental labeling program, most critics of the music industry system have concentrated on the system as a whole, and not on particular practices. They assert that the industry's "explicit content" labels[22] do not provide parents with sufficient information as to the content of a recording or music video because the label may be awarded for having any combination of "strong language or depictions of violence, sex or substance abuse"; the label does not specify into which category or categories the recording fits.[23] Some have suggested the lyrics be included in all labeled recordings so parents can judge for themselves the appropriateness of the recordings for their children.[24]

In general, critics urge that the current parental advisory label system be replaced with an age- and/or content-based rating system.[25] The American Academy of Pediatrics ("AAP"), for example, has specifically called for "the music industry [to] develop and apply a system of specific content-labeling of music regarding violence, sex, drugs or offensive lyrics . . . . If labeling is not done voluntarily by the music industry, then regulations should be developed to make it mandatory."[26]

IV. THIRD-PARTY VIEWS OF THE ELECTRONIC GAME INDUSTRY SELF-REGULATORY SYSTEM

Since 1995, the Entertainment Software Rating Board ("ESRB") rating system, which is the most comprehensive rating system of the three industries analyzed in this Report,[27] has been examined by the National Institute on Media and the Family ("NIMF").[28] Through its yearly "Report Cards," NIMF grades various aspects of the electronic game rating system, including the accuracy of the ratings and the percentage of games rated. In the 1998 and 1999 Report Cards, NIMF gave ESRB a "B" and "B-" respectively for the accuracy of its ratings, and an "A" in both years for the percentage of games rated.[29] In addition, members of Congress have praised the rating system.[30]

Although the rating system itself is generally given good marks, other aspects of the electronic game industry have been criticized. For example, some have expressed concerns that violent, M-rated electronic games are marketed indirectly to children through the sale of less violent hand-held versions of the games and the sale of action figures based on the games.[31] Although the hand-held games for young children do not use the same detailed graphics as the adult versions and may be rated E (for Everyone), some activists have charged that these "gateway" games introduce the characters of the violent, adult-rated games and attempt to establish "brand loyalty."[32] One advocacy group has recommended that games rated for, and marketed to, children but which are based on adult games be clearly labeled as such.[33]

Others have raised questions about the depiction of violent themes in some industry advertising.[34] Apparently in response to such criticism, the Interactive Digital Software Association ("IDSA") put in place a code of ethical principles for the electronic gaming industry on January 31, 2000. The code calls upon industry members to avoid graphic or excessive depictions of violence in their advertising.[35]

V. THIRD-PARTY VIEWS OF THE ENTERTAINMENT INDUSTRY SELF-REGULATORY SYSTEMS IN GENERAL

Some have commented that having different ratings and labels for the motion picture, music recording, and electronic game industries is confusing and contradictory.[36] Although the media industries contend that each system needs to be tailored to the unique characteristics of each industry,[37] some commentators have called for a uniform rating system for all entertainment media.[38] For example, the Media Violence Labeling Act of 2000, introduced in the U.S. Senate in May 2000, calls for:

> The establishment, use, and enforcement of a consistent and comprehensive system in plain English for labeling violent content in audio and visual media products and services (including labeling of such products and services in the advertisements for such products and services), whereby
>
> (1) the public may be adequately informed of –
>
> (A) the nature, context, and intensity of depictions of violence in audio and visual media products and services; and
>
> (B) matters needed to judge the appropriateness of the purchase, viewing, listening to, use, or other consumption of audio and visual media products and services containing violent content by minors of various ages; and
>
> (2) the public may be assured of –
>
> (A) the accuracy and consistency of the system in labeling the nature, context, and intensity of depictions of violence in audio and visual media products and services; and
>
> (B) the accuracy and consistency of the system in providing information on matters needed to judge the appropriateness of the purchase, viewing, listening to, use or other consumption of audio and visual media products and services containing violent content by minors of various ages.[39]

To achieve these goals, the proposed legislation calls for the manufacturers and producers of audio and visual media products and services to develop a uniform labeling system, with a single label format, for violent content in interactive electronic game products and services, video program products, motion picture products, and sound recording products.[40]

Some critics, citing economic temptations to "downrate" a product to capture a larger audience, have recommended moving beyond voluntary rating and labeling systems to an external rating board with authority to assign or approve ratings.[41] Such rating boards, it is proposed, could include the media industries, but the industries would not have majority representation.[42]

Finally, a public education campaign to educate parents about the rating and labeling systems also has been suggested,[43] as has a National Clearinghouse on Children and Entertainment Violence,[44] with funds to be appropriated by Congress, to distribute information nationally to parents, educators, and child advocates.[45]

VI. THIRD-PARTY VIEWS OF ENTERTAINMENT MEDIA RETAIL OUTLETS

The retail outlets for each of the entertainment media industries have been criticized for failing to enforce the age limitations of the existing rating systems. Motion picture theaters and video game rental and retail stores have been called to task for not consistently checking the ages of prospective customers and for selling, renting, or exhibiting M- or R-rated products to children.[46] The National Association of Theatre Owners ("NATO") has responded to such criticism by stepping up its enforcement of the motion picture rating system at the box office.[47] And the ESRB launched a "Commitment to Parents" program to encourage electronic game retailers to prohibit the sale of M-rated games to persons under the age of 17 without parental permission, and the sale of AO-rated games to persons under 18.[48]

Music retailers are free to decide whether or not they will restrict the sale of explicit-content labeled items to those under age 18;[49] this policy has been criticized as rendering the labeling system ineffective.[50] Parents have complained that they frequently are unable to screen music lyrics before they or their children purchase recordings,[51] and that many retailers refuse to offer a refund after a CD package is opened, thereby preventing parents from returning unauthorized purchases of explicit-content labeled recordings by their children.[52]

The Media Violence Labeling Act of 2000, in addition to establishing the uniform labeling system mentioned above, would prohibit sales of audio and visual media products and services to persons below the age designated in the label.[53]

ENDNOTES

1. *See Report* Section I.C (sources of information provided to the Commission).

2. *See generally* Bob Dart & Scott Shepard, *A Scattershot Approach to Curbing Violence?: Ratings of Films, Other Media, Not Reliable, Critics Charge*, The Atlanta J. and Const., June 11, 1999.

3. *See, e.g., infra* this Appendix, Section IV, paragraph 1 and accompanying notes.

4. For example, on May 4, 1999, the Senate Commerce, Science and Transportation Committee held a hearing on the marketing of violence to children. *See Marketing Violence to Children: Hearing Before the Senate Comm. on Commerce, Science, and Transp.*, 106th Cong. (1999), *reprinted at* 1999 WL 278161 [hereinafter *1999 Media Violence and Marketing Hearings*]. In his opening statement, Senator Sam Brownback explained that the purpose of the hearing was not to consider legislation, but "to gather more information on a matter of great public concern, and considerable national urgency. . . .We hope to lay the groundwork for a fruitful discussion with industry leaders on how best to address this problem." *Id.* (opening statement of Sen. Brownback); *see also* www.senate.gov/~commerce/hearings/0504bro.pdf (visited Aug. 16, 2000).

On September 14, 1999, the Majority Staff of the Senate Committee on the Judiciary, chaired by Senator Orrin G. Hatch, released a report summarizing pending legislation and setting forth additional suggestions for improving the media rating systems. *See* Majority Staff of the Senate Comm. on the Judiciary, 106th Cong., *Report on Children, Violence, and the Media: A Report for Parents and Policy Makers* (Comm. Print. 1999), www.senate.gov/~judiciary/mediavio.htm (visited July 31, 2000) [hereinafter *Senate Judiciary Media Violence Report*].

On May 2, 2000, Senator John McCain and Senator Joseph I. Lieberman introduced a bill to "provide for the development, use, and enforcement of an easily recognizable system in plain English for labeling violent content in audio and visual media products and services." *See Media Violence Labeling Act of 2000*, S. 2497, 106th Cong. (2000). The bill has been referred to the Senate Committee on Commerce, Science, and Transportation. *See* discussion *infra* notes 39-40 and accompanying text.

5. *See, e.g., Report* Section I.B (discussing the broad-based coalition of public figures calling for a voluntary code of conduct for the television, movie, music, and electronic game industries based on the National Association of Broadcasters Television Code).

6. The Classification and Rating Administration ("CARA")/Motion Picture Association of America ("MPAA") rating system is discussed in detail at *Report* Sections II.B and II.C and Appendix D.

7. *See Report* Sections II.B and II.C. Brief explanations as to why many films have been rated PG, PG-13, R, or NC-17 are available at www.filmratings.com (visited Aug. 15, 2000), www.mpaa.org/movieratings/search/index.htm (visited Aug. 15, 2000), and www.cara.org

(visited Aug. 15, 2000). The Film Advisory Board ("FAB") offers an alternate motion picture rating system, which is used primarily by independent producers of video movies and television movies. *See* www.filmadvisoryboard.com/rating.html (visited Aug. 15, 2000). The FAB rating system, which began in 1974 and was revised in 1988, has six basic ratings and contains at least 16 content descriptors, including violence-related descriptors such as "violence," "graphic violence," "violence in fight/war scenes," and "frightening for younger children." *Id.* It also employs content descriptors relating to sex, language, nudity, and substance abuse, and uses an Adults Only (AO) rating, comparable to the MPAA's NC-17 rating, for sexually explicit material. *Id.*; *see infra* text accompanying notes 14-15. Several Web sites aimed at parents, for example, www.kidsinmind.com and www.screenit.com, offer detailed analyses of the amount and nature of violence, sexuality and nudity, and profanity depicted in films.

8. *See Violence in Video Games: Hearing before House of Representatives Subcomm. on Telecomm. and Fin. of the Comm. on Energy and Commerce*, 103d Cong. 16 (1994) [hereinafter *1994 Video Games Hearing*] (testimony of Robert McAfee, M.D., President, Am. Med. Ass'n) ("The current movie rating system doesn't provide sufficient information for parents and other consumers to make informed judgments about the violent or sexual content in motion pictures. Labels such as R and PG provide little information about the content of a film or why it was given a particular label. An R rating by itself does not tell a parent about the type of violence depicted, the victim, and what sexual behavior is shown."). Dr. McAfee's comments were based on the American Medical Association's 1994 Report of the Board of Trustees, *Media Violence and Film Ratings: Redressing Shortcomings in the Current System*. *Id.* at 29-48. *See also* Fumie Yokota & Kimberly M. Thompson, *Violence in G-Rated Animated Films*, 283 JAMA 2716, 2720 (2000) ("Our content analysis suggests that animated films determined to be acceptable for the general audience by a ratings board contain a significant amount of violence. A G rating does not automatically signify a level of violence acceptable for very young viewers. The MPAA should consider changing the current age-based rating system to one based on content, which is what an overwhelming number of parents prefer.").

9. Joel Federman, *Media Ratings: Design, Use and Consequences* 100 (1996) [hereinafter, Federman, *Media Ratings*] ("A broad distinction between the two is that descriptive ratings tend to focus on relaying information about media content, while evaluative ratings tend to make judgments about the appropriateness of media content for particular audiences.").

10. *See* Appendix B (*Children as Consumers of Entertainment Media: Media Usage, Marketing Behavior and Influences, and Ratings Effects*).

11. *See, e.g.*, *1994 Video Games Hearing*, *supra* note 8, at 12 (testimony of Marcy Kelly, President, Mediascope). Although Ms. Kelly spoke at a hearing on video games, her call for ratings systems to recognize developmental age differences was based on Mediascope's study of film and television ratings in 36 countries and provinces. *Id.* at 13. The American Medical Association also recommended that the movie rating system divide children under 13 into two age groups – ages 3 to 7 and ages 8 to 12, to take into account "critical stages of cognitive development in a child's life." *Id.* at 16-17 (testimony of Robert McAfee, M.D.).

12. *See, e.g.*, *1999 Media Violence and Marketing Hearings*, *supra* note 4 (testimony of Diane Levin, Professor of Education, Wheelock College), *reprinted at* 1999 WL 266748; *see also* Am.

Academy of Pediatrics, Comm. on Communications, *Media Violence*, 95 Pediatrics 949 (1995) (policy statement) ("At young ages (before age 8) children cannot uniformly discriminate between 'real life' and 'fantasy/entertainment.' They quickly learn that violence is an acceptable solution to resolving even complex problems, particularly if the aggressor is the hero."); Barbara J. Wilson, *What's Wrong With the Ratings?*, 63 Media & Values 13-15 (1993), www.medialit.org/Violence/articles/whats_wrong.htm (visited Aug. 15, 2000).

The television industry, in consultation with educators, children's advocacy groups, and medical and psychological experts, designed its *TV Parental Guidelines* in part to acknowledge the developmental changes that occur at age 7. The TV-Y7 rating, which was created for programs aimed at children age 7 and above, tells parents that the rated program "may be more appropriate for children who have acquired the developmental skills needed to distinguish between make-believe and reality. Themes and elements in this program may include mild fantasy or comedic violence, or may frighten children under the age of 7. Therefore, parents may wish to consider the suitability of this program for their very young children." *TV Parental Guidelines*, www.fcc.gov/vchip (visited Aug. 15, 2000); *see also* www.tvguidelines.org (visited Aug. 15, 2000); The Center for Media Education and The Henry J. Kaiser Family Foundation, *The V-Chip Education Project: A Parent's Guide to the TV Ratings and V-Chip* (July 1999), www.vchipeducation.org. For more intense fantasy violence, the TV-Y7 rating uses the descriptor F.V. The ratings for programming not aimed at children are TV-G (General Audience), TV-PG (Parental Guidance Suggested), TV-14 (Parents Strongly Cautioned), and TV-MA (Mature Audiences Only). The latter three age-based ratings also employ content descriptors for violence (V), sexual situations (S), coarse language (L), and suggestive dialogue (D), that vary in intensity depending on the rating level. *Id.*

13. Even G-rated animated movies may contain significant amounts of violence and may not be suitable for very young children, according to a recent study of 74 G-rated animated feature films conducted by researchers at the Harvard School of Public Health. Yokota & Thompson, *supra* note 8, at 2717-19. The study found that the amount of violence and its duration on the screen has steadily increased since the first animated feature film, Disney's *Snow White and the Seven Dwarfs*, was released in 1937. *Id.* By far the greatest amount of violence in animated films was found in films released during the 1990s. *Id.* at 2720; *cf.* Daphne White, *PG-13 Movies in the Late-Bond Era: The Violence Is Far Beyond What It Used to Be*, Wash. Post, Jan. 18, 2000, at C4 (MPAA places PG-13 ratings on movies that would have been rated R 10 years ago).

14. Film critic Roger Ebert and the Broadcast Film Critics Association endorse this modification. *See* Amy Wallace, *Do Movie Ratings Need New Categories?*, L.A. Times, Aug. 10, 1999, at F1. Ebert states that "instead of helping parents shield their children from objectionable material, the rating system allows in more violence and sex under the R rating than many 17-year-olds should see." *Id.*; *see also* Roger Ebert, Guest Column, *'A' for 'Adult' Opens Up New Pic Possibilities*, Daily Variety, July 22, 1999, at 18 ("Because the MPAA has so wrong-headedly opposed any kind of a workable adults-only rating, we are faced with the current impasse, in which more and more objectionable material is crammed down into the R category.").

15. *See generally* Wallace *supra* note 14, at F1. Matt Stone, the producer of *South Park: Bigger, Longer & Uncut* and other R-rated movies, has, as a result of a high profile ratings dispute with the MPAA, recommended that the MPAA adopt three "easy-to-follow steps" to provide parents some security, artists real freedom, and the MPAA system credibility:

> 1) Include symbols for nudity, violence, language, drug use, etc. next to the rating. In addition, adding qualifiers such as M for mild and E for extreme will give parents information why a movie is rated a certain way. 2) Enforce age restrictions at theaters. . . . 3) Drop the NC-17 rating altogether. Anything deemed unsuitable for people under 17 should be rated R. With the added labeling, parents can make educated decisions about content. And no filmmaker would have to cut anything, ever. These changes can give the American public confidence in the MPAA's rating system.

Matt Stone, *Ratings Grating*, Daily Variety, July 30, 1999, at 23.

16. *See Report*, *supra* Section II.B and Appendix D; *see also* Amy Wallace, *MPAA's Dozen Judge Movies for Millions*, L.A. Times, July 18, 1999, at A1.

17. *See* Wallace, *supra* note 16, at A1; *1994 Video Games Hearing*, *supra* note 8, at 13 (testimony of Marcy Kelly, President, Mediascope) (urging electronic games industry to establish a non-secretive ratings board: "It is my opinion that the lack of professional guidance and the secrecy of the process undermine the legitimacy of [the MPAA] system. I urge the interactive industry not to follow this approach. Providing public accountability will lend credibility to the interactive ratings process from the outset.").

18. Richard M. Mosk, *Motion Picture Ratings in the United States*, 15 Cardozo Arts & Ent. L.J. 135, 142 (1997). Mr. Mosk is co-chair of CARA.

19. *Cf.* Wallace, *supra* note 16, at A1 (noting that in a typical day raters watch, discuss, and vote on three films).

20. *See, e.g.*, *1994 Video Games Hearing*, *supra* note 8, at 13 (testimony of Marcy Kelly, President, Mediascope) ("In our review of ratings systems around the world, we found only one that does not include [input from professionals] . . . the movie ratings system of the United States"); Am. Med. Ass'n, *AMA Report Card on Virtual Violence* ("The motion picture industry's ratings are determined by a board of concerned parents, none of whom have training in child development or the effect of mass media on children."). By contrast, the Entertainment Software Rating Board includes educators and psychologists on its Advisory Board, though not necessarily among the raters. *See About the Entertainment Software Rating Board*, www.esrb.com/esrb.html (visited Aug. 15, 2000). The music industry has no rating board; record companies label their own products. *See* Appendix D.

21. *See 1994 Video Games Hearing*, *supra* note 8, at 17 (testimony of Dr. Robert McAfee) ("[I]t is essential to realize that contextual features of media violence are critical mediators of harmful effects and that such features often affect younger and older children differently.").

22. *See Report* Section IV.B and Appendix D.

23. *See generally Report* Section IV.B. The critics of the parental advisory label program do not believe that it provides sufficient information for parents to make informed choices. For example, George Gerbner, a professor at Temple University and former dean of the Annenberg School of Communications at the University of Pennsylvania, maintains that the system as a whole is problematic: "[T]he labeling system is an uninformative scheme that deceives the public and protects industry from parents rather than the other way around." *Labels and Lyrics: Do Parental Advisory Labels Inform Consumers and Parents?: Hearing Before the Senate Comm. on Commerce, Science, and Transp.*, 105th Cong. 54 (1998) [hereinafter *1998 Labels and Lyrics Hearing*]. Charles Gilreath, the publisher of the *Family Entertainment Guide*, which reviews all major music releases, believes that parents need detailed information: "It is a known fact that [parental advisory] stickers do not work. The RIAA and NARM's own studies show that most parents do not know what a sticker means . . . . We believe the solution is to empower parents with the information they need to parent . . . . To this end, we are now using the information revolution to favor parents." *Id.* at 12–13.

24. *See, e.g.*, *Senate Judiciary Media Violence Report*, *supra* note 4, at 14 ("[P]arents frequently complain that, with respect to the music their children buy, parents are unable to screen the lyrics beforehand. Consideration should be given to a proposal that would require retail establishments that sell music to make the lyrics of any album, compact disc, tape, or other medium available for on-site parental review.").

25. *See, e.g.*, *Senate Judiciary Media Violence Report*, *supra* note 4, at 18 (calling on RIAA to adopt content-based ratings similar to those used with other media); National PTA, *Resolution: A Rating System for Records, Tapes, and Cassettes* (adopted 1984, reviewed 1993 and 1998) (labels should include descriptors for profanity, sex, violence, or vulgarity). Barbara Wyatt, president of the Parents' Music Resource Center, notes: "There are standardized labels, but no standards," and advocates making the "labels more specific as to content, similar to television ratings." *1998 Labels and Lyrics Hearing*, *supra* note 23, at 59. And Don Cornelius, president of Don Cornelius Productions, Inc., and former producer of *Soul Train*, believes that the "parental [label] system allows producers, artists, labels, distributors, [and] manufacturers, to release records that are vulgar, profane, antisocial in general with impunity." *Music Lyrics and Commerce: Hearings Before the House of Representatives Subcomm. on Commerce, Consumer Protection, and Competitiveness of the Comm. on Energy and Commerce*, 103d Cong. 29 (1994) (testimony of Don Cornelius). He has called for the recording industry to adopt a multi-category rating system similar to the MPAA system. *Id.*

26. *See Music Violence: How Does It Affect Our Children?*: *Hearing Before the Sen. Subcomm. on Oversight of Gov't Management, Restructuring, and the District of Columbia of the Comm. on Gov't Affairs*, 105th Cong. 26 (1997) (testimony of Dr. Frank Palumbo on behalf of the AAP). The AAP has also recommended research on the impact music lyrics and videos have on the behavior of adolescents and pre-adolescents; encouraged the music video industry to produce videos about nonviolence and conflict resolution; called for wider involvement of pediatricians in improving media and educating parents; and recommended that pediatricians encourage parents to take an active role in monitoring the music videos that their children watch or purchase. *See* Am. Academy Pediatrics, *Policy Statement on the Impact of Music Lyrics and Music Videos on*

Children and Youth, 96 Pediatrics 1219 (Dec. 1996), www.aap.org/policy/01219.html.

27. *See Report* Section VI.B and Appendix D.

28. *See* David A. Walsh, National Institute on Media and the Family, *1998 Video and Computer Game Report Card* (released Dec. 1, 1998), www.mediaandthefamily.org/research/vgrc/1998-1.shtml (visited Aug. 15, 2000); *1999 Video and Computer Game Report Card* (released Nov. 23, 1999), www.mediaandthefamily.org/research/vgrc/1999-1.shtml (visited Aug. 15, 2000) [hereinafter referred to collectively as *NIMF Report Cards*].

29. *See id.* In its 1999 Report card, NIMF reported that marketers promoted to and labeled as appropriate for children as young as 4 and 5 action figures based on M-rated games such as Metal Gear Solid, Turok, and Mortal Combat. *See* www.mediaandthefamily.org/research/vgrc/1999-1.shtml; *see also Report, supra* Section VII.D.

30. In November 1999, Senators Joseph Lieberman and Herb Kohl issued a press release praising the video game industry for launching a new campaign to promote its voluntary ratings system. *See* News Release, *Lieberman, Kohl Welcome Efforts by Video Game Industry to Help Parents Shield Children from Digital Violence*, www.senate.gov/~lieberman/press/99/11/r110999a.html (visited Aug. 30, 2000).

31. *See supra* note 29. The Lion and Lamb Project notes that the hand-held Game Boy version of the M-rated Duke Nukem game was marketed to children ages five and up. *See* Daphne White, *The "Dirty Little Secret" About Video Games*, 2 *The Lion & Lamb Project Newsletter* 1 (Summer/Fall 1999), www.lionlamb.org/news_2_2_1.html (visited July 31, 2000).

32. *Id.* Arthur Pober, the executive director of the ESRB, disputes this charge: "We're not looking at brand loyalty. We are just looking at each product as an independent, stand-alone entity." *Id.* It has also been suggested that some electronic games should be labeled to show that they are based on R-rated movies. *Id.*

33. *See NIMF Report Cards, supra* note 28.

34. *See id.*; *1999 Media Violence and Marketing Hearings, supra* note 4 (statement of Sens. Orrin Hatch and Joseph Lieberman) (condemning perverse and antisocial messages in game-player magazines read by young gamers), *reprinted at* 1999 WL 278161.

35. *See* IDSA, *Entertainment Software Group Creates Independent Council to Oversee Video Game Advertising Leading Video Game Magazines Adopt Industry Standards*, Oct. 13, 1999 (press release), www.idsa.com/releases/10_13_99.html (visited July 31, 2000). According to the IDSA, the ESRB will monitor and enforce the new advertising principles. If a company violates the code, it will be asked to adjust its advertising to comply. If it fails to do so, according to the IDSA, possible sanctions include "revocation of the title's rating, public notice of the violation, referral of the violation to appropriate government agencies, and/or the payment of fines." *Id.*; *see also Report* Section VI.B.

36. *See* David A. Walsh & Douglas A. Gentile, National Institute on Media and the Family, *Parents Rate the Ratings: A Test of the Validity of Movie, Television and Video Game Ratings Systems* 15 (2000) (unpublished manuscript under review by professional journal for publication and on file with the Federal Trade Commission; cited with written permission of authors) ("The current alphabet soup of systems is too confusing and even contradictory for parents to use effectively. Multiple systems are also more complicated to test and monitor than a single system, making it more difficult for the academic and medical communities to participate in ensuring the efficacy of this solution to the threats to public health."); *Senate Judiciary Media Violence Report*, *supra* note 4, at 13-14 ("Asking parents and retailers to master each of [the] differing systems needlessly complicates their ability to shield children from harmful material"); *see also* Adam Nagourney, *Hillary Clinton Seeks Uniform Sex and Violence Rating for a Range of Media*, N.Y. Times, Dec. 21, 1999, at B5 (citing First Lady Hillary Rodham Clinton's criticism of the current ratings systems as a series of letters that amount to a confusing "alphabet soup").

37. For example, the music industry notes that the great volume of CDs produced each year – nearly 60,000 – coupled with the subjective lyrical content of music, would make uniform ratings by an independent rating board virtually impossible. *See* Hillary Rosen, Recording Industry Association of America, *A Statement from RIAA CEO Hilary Rosen Regarding First Lady Hillary Clinton's Call for Uniform Entertainment Media Labeling*, Dec. 22, 1999 (press release), ("A uniform rating system is unnecessary and unworkable. Music is different from other forms of content and a one-size-fits-all approach simply doesn't make sense."), www.riaa.com/PR_Story.cfm?id=24 (visited July 27, 2000); *see also* Randy Weddington, *Labeling Media Violence; Retailers and Entertainment Executives Speak Out Against the Government's Latest Push for a Unified Rating System*, Supermarket News, June 5, 2000, at 104.

38. *See, e.g.*, *Senate Judiciary Media Violence Report*, *supra* note 4, at 13-14; Walsh & Gentile, *supra* note 35, at 3 ("A single ratings system applied universally across industries would greatly simplify the efforts of parents and caregivers to use the system as well as the efforts of outside parties to monitor the use and validity of the system."); *1994 Video Games Hearing*, *supra* note 8, at 16-17 (testimony of Dr. Robert McAfee) (calling for a uniform ratings system for movies, television, and video programs that could be applied to existing and future entertainment technologies). *See also* Brooks Boliek, *Unified Ratings Plan Resurfaces*, Hollywood Reporter, Apr. 26, 2000 (Clinton administration encourages entertainment industry to develop a single content ratings system for all media).

39. *Media Violence Labeling Act of 2000*, *supra* note 3, at § 2(b).

40. *Id.* at § 2(c). The proposed legislation also calls upon manufacturers and producers of audio and visual media products and services to submit a proposal for a joint labeling system for violence to the Federal Trade Commission. It authorizes the Commission to review the proposal to determine whether it meets the purposes of the legislation, and requires the Commission to adopt either the submitted proposal or a modified proposal. If the manufacturers and producers do not submit a proposal to the Commission, the bill requires the Commission to issue regulations to establish a labeling system. *Id.* Finally, the legislation authorizes civil penalties not to exceed $10,000 for violations of the act, *i.e.*, a sale of a media product without a label or a sale of a media product in violation of the age restriction established by the labeling system. *Id.* at §2 (c), (d).

41. *See, e.g.*, Walsh & Gentile, *supra* note 36, at 16 ("The economic temptations to 'downrate' a product in order to capture a large audience have increased, and, at the same time, each passing season encourages producers to outdo the previous season in edgy material – more violence, more sexual situations, more adult language. The time has come for ratings to move beyond the voluntary arena. An external rating board with authority to assign and/or approve ratings grows increasingly necessary each year.").

42. *See, e.g.*, Federman, *Media Ratings, supra* note 9, at 103. To ensure ratings integrity, Federman recommends "a decision-making body whose board of directors is independent of majority control by the industry being rated and completely independent of government. Such a board could involve a mix of individuals, representing constituencies relevant to the ratings process, such as experts in child development and psychology, as well as parents and teachers. These constituencies would certainly include the media industries in question, but they would not have majority representation on the board."

43. *See, e.g., Senate Judiciary Media Violence Report, supra* note 4, at 13 (calling for a national media campaign to educate parents about rating systems, the V-Chip, Internet filters, and other tools available to shield children from media violence); *1999 Media Violence and Marketing Hearings, supra* note 4 (testimony of Diane Levin, Professor of Education, Wheelock College) (recommending that schools develop strategies for counteracting the lessons children are learning about violence). Daphne White, executive director of The Lion and Lamb Project, has suggested that "this country. . . undertake a massive parenting outreach and education campaign about the ways that children learn violence." *1999 Media Violence and Marketing Hearings, supra* note 4, *reprinted at* 1999 WL 266735. *See also* Am. Academy Pediatrics, Comm. on Pub. Education, Policy Statement, *Media Education*, 104 Pediatrics 343 (Aug. 1999) ("Pediatricians should encourage their state and federal governments to explore mandating and funding universal media education programs with demonstrated effectiveness in American schools.").

44. *See, e.g., 1999 Media Violence and Marketing Hearings, supra* note 4 (testimony of Daphne White, Executive Director, The Lion and Lamb Project), *reprinted at* 1999 WL 266735. Ms. White compared such a clearinghouse to the Congressionally funded National Clearinghouse for Alcohol and Drug Information that could provide materials on, among other things, the ways children learn violence, how to select appropriate toys, how to teach children anger management and conflict resolution skills, and ways that parents can teach their values to their children. *Id.*

45. The entertainment media industries' education programs are discussed in Appendix D.

46. *See, e.g., 1999 Media Violence and Marketing Hearings, supra* note 4 (testimony of Sen. Joseph Lieberman) (asking theater owners to uniformly enforce the R-rating prohibition and calling on retail and rental outlets to adopt a similar policy barring the sale or rental of adult-rated video games to children), *reprinted at* 1999 WL 278161. The perception that retailers and exhibitors do not consistently limit children's purchases of all media products is consistent with the findings of this Report. *See* Appendix F (*Mystery Shopper Survey and Parent-Child Survey*).

In its *1998 Video and Computer Game Report Card*, NIMF gave retailers a "D" for ratings enforcement, recommending that retail and rental stores develop and enforce policies about the sale or rental of Mature games to children, and that the industry and the stores develop and implement an educational program about the rating system for employees and customers. *See NIMF Report Cards, supra* note 28. In the 1999 Report Card, NIMF gave retailers a "C" for ratings enforcement, reporting a substantial improvement in the number of stores that had policies preventing the rental of T-rated games to children younger than 13 or M-rated games to children younger than 17. *See id.* NIMF also lauded the IDSA's planned major educational campaign about the ESRB rating system. *See id.*

47. In June 1999, shortly after the announcement of this study, President Clinton and National Association of Theatre Owners' president William Kartozian jointly announced that NATO would require that young patrons present picture identification cards before being admitted to R-rated movies and that theater owners would enforce the policy strictly. *See* Charles Babington, *Theaters to Require Picture IDs for R Films: Effect of Post-Littleton Move Is Questioned*, Wash. Post, June 9, 1999 at A1.

48. *See Report* Section VII.E. The Video Software Dealer Association renewed its program, "Pledge to Parents," which is similar to the ESRB's program, but applies to both electronic games and movie videos. *Id.*

49. *See* statements available at www.riaa.com/Parents-Advisory-1.cfm (visited Aug. 15, 2000) and www.narm.com/government/papers.htm (visited Aug. 15, 2000).

50. *See, e.g., 1998 Labels and Lyrics Hearing, supra* note 23, at 5 (opening statement of Sen. Sam Brownback) ("[A]lthough some stores have a policy of refusing to sell albums that carry a parental sticker to children, anecdotal evidence suggests that this policy is often ignored, particularly since store employees are often themselves under the age of 18. Other stores do not restrict the sale of explicit music to minors"); *id.* at 60 (testimony of Barbara P. Wyatt, president of the Parents' Music Resource Center).

51. *See Senate Judiciary Media Violence Report, supra* note 4, at 14 (recommending requirement that music retailers make lyrics available for on-site parental review).

52. *See 1998 Labels and Lyrics Hearing, supra* note 23, at 60 (testimony of Barbara P. Wyatt).

53. *See Media Violence Labeling Act of 2000, supra* note 3, at § 2(c).

Appendix H

ENTERTAINMENT MEDIA RATING INFORMATION AND SELF-REGULATORY EFFORTS ON THE INTERNET

I. INTRODUCTION

Although the phenomenal growth of the Internet is a relatively recent development, the Internet has already significantly increased children's entertainment options. Recent studies show that children are logging on in ever-increasing numbers.[1] Children, in fact, may be more familiar with computers and the Internet than their parents. In the National Public Radio/Kaiser Family Foundation/John F. Kennedy School *Kids & Technology Survey*,[2] for example, half of the adults surveyed responded that their children are "more comfortable" with computers than the adults are themselves. Only 14% of children surveyed responded that they are being "left behind" with computers, while 49% of adults expressed that concern. Children frequently use the Internet for entertainment, visiting "entertainment" Web sites more than other genres including sports and news sites.[3]

The growing influence of the Internet affects the public debate on entertainment media violence in four significant ways. First, the Internet serves as a medium for advertising and marketing, in a variety of forms ranging from banner advertisements to Web sites devoted exclusively to a single movie, game, or album.[4] Movie, music, and electronic game producers, as part of their promotions, disseminate portions of rated or labeled material (such as game demos or excerpts of songs or movie clips) on the Internet. Second, the Internet serves as a retail outlet. Entertainment media products are not only sold online for delivery offline, but in some cases can be purchased and transmitted online.[5]

Third, not only are products available for retail sale online, but the Internet serves as an open bazaar where anyone with Internet access and a credit card (or access to an alternative payment mechanism) can buy. Some children might exploit the anonymity of the Internet to gain access to rated material, allowing them to evade enforcement of restrictions on rated or labeled material at the retail store. Fourth, the Internet serves as an informational tool. It has great potential as a vehicle for dissemination of ratings information directly to children, and to those parents who are computer-savvy.

To learn about the entertainment industry's online marketing practices, the Commission independently reviewed the disclosure of ratings or advisory labels and other ratings practices on the Internet. The Commission visited content providers' Web sites as well as online retailers' sites. Also, a Commission consultant tracked and monitored industry practices on the Internet. The results of these monitoring efforts are set out below.

II. COMMISSION REVIEW OF OFFICIAL INTERNET SITES

A. *How the Study Was Conducted*

The Commission reviewed electronic game, movie, and music Internet sites for rated or explicit-content labeled movies, recordings, and electronic games ("games") during the week of December 20, 1999. The purpose of the review was to determine: (i) whether ratings/labels or content descriptors were displayed on the Web sites; (ii) where any such information was displayed; (iii) whether there was any type of warning or other notice that the product had been rated or labeled as a product that may be inappropriate for children on the basis of violent content; (iv) whether children could download content such as demos or audio or video clips or even the product itself; and (v) whether any steps were taken to attempt to prevent children from viewing or downloading content, among other questions.[6]

For each type of product, the Commission restricted the sites checked to official sites – sites affiliated with the game publisher, music label, recording company or artist, movie studio, etc. Because the companies producing the content would have less control over third parties' policies regarding the treatment of labeled or rated material, third parties' sites were not reviewed. The Commission staff administering the review conducted a training session prior to the review and rechecked the reviewers' responses.

In reporting its results, the Commission gave credit to Web site operators for displaying a product's rating, label, or content descriptor anywhere on the site. The Commission credited movie sites for displaying a rating that was visible only if one happened to view the film's trailer; music sites for displaying the Parental Advisory label on a small scanned image of the cover art (while also noting whether the wording of the label was large enough to read); and game sites for displaying the Mature rating if the rating was visible only on a picture of the cover art of the game box, or even only after downloading the game demo.

The Commission also gave credit if a Web site contained any type of statement relating to the age of the viewer, whether or not the age reference seemed related to the product's content. For example, in the game context, sites were credited for statements suggesting to visitors that children, or visitors under a certain age, should not view the site or a demo; purchase the game or merchandise based on it; or enter contests or chat rooms discussing or promoting the game, etc., even though in most cases, the age reference appeared to be driven by other reasons, such as concern with the privacy of personal information of children under 13 due to the Children's Online Privacy Protection Rule, 16 C.F.R. Part 312.

B. Results of the Study

1. Movie sites

For movies, the Commission surfed 46 sites for the top-selling 1999 films that had been rated either PG-13 or R, due, at least in part, to the film's violent content. Nearly all – 41 of the 46 sites reviewed – displayed the movie's rating somewhere on the site. None, however, displayed the movie's content description, even for movies rated R for strong violence. Most of the sites (39) provided trailers for visitors' viewing. In many cases, the trailer either did not contain the red or green "trailer tag" or the movie rating itself. Relatively few sites provided visitors the opportunity to purchase the movie; of those that did, virtually all (11 of 12) displayed the movie's rating on the purchase page.

Ten of the 46 sites contained at least one statement suggesting to visitors that children, or visitors under a certain age, should not view the site; view or download a trailer; purchase the movie; enter contests or other prize promotions promoting the movie; enter chat rooms or message boards discussing or promoting the movie; or purchase movie-related merchandise. Five sites asked the visitor to disclose his or her age at some point, although there was no mechanism for age verification. In addition, none contained any other warning or cautionary statement(s) relating to the content of the movie or the site, or placed links to the MPAA Web sites that contain further ratings information.

2. Music sites

For music sites, the Commission surfed 39 official Web sites for the most popular explicit-content labeled recordings based upon a review of Billboard data (the top 100 albums as ranked by Billboard online as of December 11, 1999 and the top 200 albums as ranked by Billboard in print as of November 13, 1999). Because the parental advisory label does not provide information about the content of a specific recording, these recordings may have been labeled due to violent content or for other reasons, including strong language or references to sex or drug use. The official site was either the artist or band's site or a recording company site. Thirty-three of the 39 sites showed a picture of the CD cover, with the advisory label appearing on 15 of these covers. Only four of the advisories were readable. To communicate the explicit nature of a recording, however, 14 of the 39 sites provided consumers with additional information usually in the form of an enlarged parental advisory placed on the site or a text disclosure stating "explicit" placed near the picture of the CD.

In most cases, a visitor to the site could play all or a portion of a music video (27 of 39), listen to part of the album (34 of 39), or purchase the album (29 of 39). Only one site contained any statement suggesting to visitors that children, or visitors under a certain age, should not view the site; view or download a music video; purchase the album; enter contests or other prize promotions promoting the album; enter chat rooms or message boards discussing or promoting the album; or purchase merchandise based on or promoting the album. Three sites asked the visitor to disclose his or her age.

3. Electronic game sites

In examining game sites, the Commission examined official publisher Web sites for 40 games. These games make up almost all of the games that had been rated M by the ESRB due, at least in part, to violent content, between January 1999 and November 1999. The game's rating was displayed on at least some portion of the site at three quarters of the game sites (30 of 40), but the content descriptors were rarely provided (only four of the sites included the game's content descriptor). Only four of the 40 sites contained any statement suggesting to visitors that children, or visitors under a certain age, should not view the site, view or download a demo, purchase the video game, enter contests or other prize promotions promoting the video game, enter chat rooms or message boards discussing or promoting the video game, or purchase merchandise based on or promoting the game. Only five sites contained any other warning or cautionary statement relating to the content of the video game or the site, and two asked the visitor to disclose his or her age. Yet, almost three out of every four sites provided game movies/trailers or demos that site visitors could either view or play (70%) or provided an opportunity to purchase the game (80%). Six of the sites linked to the ESRB Web site, which contains enhanced ratings information.

III. COMMISSION REVIEW OF ONLINE RETAILER SITES

During the week of December 27, 1999, the Commission also conducted a spot-check of online retailers' sites to look at these companies' practices in selling R-rated movies, M-rated games, and labeled music. The Commission examined the same five movies, electronic games, and recordings at five online retailers' sites for each product category.[7]

Although the sample size of this spot-check was not large enough to support industry-wide conclusions, the results provide a snapshot of the practices of the retailers' sites that the Commission examined in selling rated or labeled products online. The online movie and electronic game retailers' practices were largely uniform. These sites, with little variation, indicated the product's M or R rating (though not necessarily the rating icon), and displayed the rating in a place that a user would likely see it – adjacent to text, images, or other information relating to the product. Only one movie retailer and one game retailer displayed any type of statement that children, or those under a certain age, should not purchase the product, and only one game retailer (and no movie retailer) provided any content descriptor indicating the reason for the rating (*e.g.*, violence, explicit language, etc.).

By contrast, the music retailers only sometimes displayed the parental advisory label in promotions for recordings. Three of the retailers, however, provided additional information to consumers, in a readable text disclosure, that stated "explicit content" near the CDs or cassettes that consumers could purchase. Each of the music retailers also provided audio clips of the explicit recording, allowing a user of any age to listen to an excerpt of a song or songs from the recording.

IV. ROLLOW REPORT ON ENTERTAINMENT INDUSTRY PRACTICES ONLINE

Anne Rollow, a Master's Degree candidate at the John F. Kennedy School of Government, Harvard University, prepared a report for the Commission titled "Self-Regulation in the Entertainment Industry: A Study of Online Marketing and Advertising Practices for Entertainment Products with Violent Content." Among other things, she monitored top teen sites based on demographic data received from PC Data Online (1999) and publicly available data from Media Metrix; tracked official sites for rated or explicit-content labeled products; monitored "vertical portals/content aggregator" sites;[8] and monitored top Internet retailers of entertainment products. Ms. Rollow conducted this research over the course of several months, from November 1999 to March 2000.

A. *Movie Sites*

Ms. Rollow's research on 30 official movie sites led her to conclude that approximately two-thirds of the sites displayed the rating on the home or front page, although the rating was often positioned so that it was necessary for the user to scroll down below the page break to see it. She noted that this practice made the rating less conspicuous, for example, in cases where the user was not signaled to scroll down to view other content and could immediately click to enter the site without scrolling. She also found that "virtually none" of the sites provided content descriptors and that more often than not trailers lacked both trailer tags (*e.g.*, the "green band" that indicates the trailer is approved for all audiences) and the movie rating itself. These findings confirm the results of the Commission's study of official movie sites: although most sites did contain the rating, none disclosed the content descriptor, and the sites were inconsistent in displaying trailer tags and rating information on trailers.

Reviewing seven movie aggregator sites operated by third parties and four online vendors, Ms. Rollow found that the aggregator sites usually did display the R rating. Because they often contained some type of critical review, these sites were more likely than the official sites to provide information advising the user about the nature of the movie's content. Like the official sites, these sites were inconsistent in displaying the rating and trailer tag when providing trailers. Although online vendors also usually displayed the R rating, the rating information was not necessarily unavoidable: because the rating information was not provided on the purchase page, users in some cases could venture onto the sites and complete the purchase without ever being notified of the movie's rating. Two movie vendors (Amazon.com and Blockbuster.com) declared that R-rated videos were not for sale to those under 18.

B. Music Sites

For the music industry, Ms. Rollow found that the practices of the 14 official sites and three aggregators that she reviewed were very similar to each other. Three of the sites displayed the parental advisory label on the image of the cover art. Most of the sites offered the opportunity to listen to samples of music from the labeled album. Because the advisory label is given to the album, not specific tracks, it is difficult to know whether the tracks selected for free download are the ones that led the recording company to label the album. Many sites offered the opportunity to purchase the music directly or through an independent vendor, but did not attempt to exclude younger consumers from the offer. Again, these figures are consistent with the Commission's own survey in finding that a minority of music sites displayed the parental advisory label, while most offered both an opportunity to purchase and an opportunity to download audio clips. Ms. Rollow also inspected five online vendors' sites; these sites did not restrict sale based on age, though three noted that labeled albums contained "explicit lyrics" or words to that effect.

C. Game Sites

Ten of the 18 official sites for electronic games showed the ESRB rating on the home page. The sites that did display the rating generally displayed it in a prominent manner, so that the user need not scroll past the screen break to view the rating. The sites did not display the content descriptors, and many of the game video clips (or "trailers") did not incorporate the product rating. Many sites allowed users to download trailers or even game demos – excerpts of the game that allow the user to experience game play – but did not attempt to restrict this opportunity to users over a certain age. Most of the sites provided links so that users could purchase the game, either through the publisher directly or through another vendor, and this purchase opportunity also was not restricted based on the user's age. These data are consistent with the Commission's study results, which found just under two thirds of the sites showing the game's rating and only a very few showing the content descriptors.

The six game aggregator sites Ms. Rollow monitored were also inconsistent in providing rating information. Again, the sites did not provide the content descriptors, but generally did provide both game trailers and purchase opportunities without restriction or warning based on age. Game trailers did not always indicate the game's rating; in cases where the game publisher provides the trailer directly to the aggregator, the absence of the rating on the aggregators' trailer might fairly be attributed to the publisher. As to online vendors, Ms. Rollow took special note of two online vendors that displayed game ratings at the point of purchase and linked to the ESRB ratings. One of those vendors had declared its policy not to sell movie videos to children under 18, but had not adopted a similar policy with regard to M-rated games.

V. CONCLUSION

The Internet is likely to be a growing medium for both *promoting* and *distributing* entertainment products. Although the Internet poses special challenges to industry in terms of limiting youth access to violent rated or explicit-content labeled material, the industry could use the Internet's capacity to provide more information about ratings and labels, particularly given the low level of parental supervision of this medium.

Based upon the reviews described above, the following generalizations may be made about the nature of ratings enforcement online:

Online retailers did not take steps to ensure that rated or labeled material is not sold to youth. Many of the sites made at least some content, especially game demos and music samples, available for download to any users for free. Retailers' reticence to inquire into the age of users or otherwise screen younger users may be based in part on privacy concerns or other reasons, but most sites did not provide any statement intended to discourage younger surfers from downloading or purchasing content.

Although some online retailers rely on use of a credit card as a proxy for age or parental consent,[9] this check may be less useful in the near future. New technology and child savvy marketers have spurred the creation of vehicles for children and teens under 18 to make purchases on the Internet, in many instances, independent of their parents and their parents' credit cards.[10] Already, Internet companies have created new ventures (combining alternative payment mechanisms with online shopping environments) that offer mostly young consumers[11] e-commerce options that allow them to make purchases without, in many cases, their parents' direct supervision.[12] Although some of these companies do strictly limit children's online purchases,[13] others filter out only some – but not all – age-inappropriate products,[14] and others offer parental control mechanisms that are imperfect.[15] Still others do not limit purchases by children in any way, thereby increasing the likelihood that rated or labeled material will be sold to youth.[16]

Web sites were inconsistent in displaying ratings and labeling information on the Internet. Although a movie studio may include the MPAA rating icon in print advertisements as a matter of course for submission for Advertising Administration approval, the same company may omit the rating from a Web site touting its movie. An online music retailer may have displayed the parental advisory on the picture of one CD, but may not have provided the advisory for another labeled album. Some companies disclosed ratings information prominently, but in general, companies seemed to be playing catch-up in adopting and implementing policies for disclosure of ratings information online. And, as in the offline world, most companies did not provide content descriptors.

The Internet's potential as a mechanism for communicating ratings and labeling information remains largely untapped. In the future, more music, movie, and game producers may take advantage of the relatively expansive space presented by a Web page, compared to traditional advertisements, to provide ratings and labeling information in a complete and useful way. When a game's rating, for example, is described only as "M," without additional description, parents who are less familiar with the rating system may not know what that rating letter means. An explanation that a game is rated M or Mature, accompanied by the game's content descriptors and a hyperlink to the ratings definitions, would likely make the information easier for parents to usefully employ. Notably, some online vendors and product sites already provide useful links to information to explain the ratings, whether at an outside source (such as the trade association's site) or an internally served ratings information page.

ENDNOTES

1. For example, the *Children, Families and the Internet 2000* study of parents and children aged 9-17, conducted by Grunwald Associates in conjunction with The National School Boards Foundation, reported a tenfold increase in the number of children going online from 2.3 million in 1994 to 25.4 million in the fourth quarter of 1999.

2. The survey was conducted between November 15 and December 19, 1999. It may be found at www.npr.org/programs/specials/poll/technology/technology.adults.html (visited Aug. 25, 2000).

3. The Henry J. Kaiser Family Foundation, *Kids & Media @ the New Millennium* 58, tbls. 46-A & 46-B (1999).

4. One measure of the substantial use of the Internet as an advertising medium is Internet advertising revenues. According to the Internet Advertising Bureau, Internet advertising revenues jumped from $76 million in the third quarter of 1996 to $1.2 billion in the third quarter of 1999. *See* Internet Advertising Bureau & PricewaterhouseCoopers, www.iab.net/adrevenue/adreveindex.html (visited Aug. 4, 2000).

5. To date, online sales to children have been hampered by the fact that only 9% of the nation's 30 million teenagers have access to their parents' credit cards – the prime currency of the Web. *See* Jump$tart Coalition for Personal Financial Literacy, *Financial Literacy Declining Among 12th Graders*, www.jumpstartcoalition.com/upload/newscfm?recordid=60 (visited Aug. 7, 2000) (summarizing results of 2000 Financial Literacy Survey) [hereinafter *Financial Literacy*]; *see also* Jeremy Quittner, *How Can Kids Buy Stuff on the Web? Ask InternetCash*, Businessweek Online (March 7, 2000) (noting overall buying power of teens and the potentially huge market of 9 million teens who spend an average of 8.5 hours a week online but lack credit cards), www.businessweek.com/smallbiz/0003/ep000307.htm?scrptFramed (visited July 17, 2000). But with the growth of new technologies, children's and teenagers' use of the Internet as a mechanism for purchasing entertainment media products is predicted to grow exponentially. One Internet research firm predicts that children ages 5 to 18 will account for $1.3 billion of e-commerce dollars by 2002. *See* Michelle Slatalla, *How to Spend an Allowance Without Leaving Home*, N.Y. Times, Aug. 12, 1999 at G1.

6. Not all of these factors are required for compliance with the self-regulatory schemes established by the entertainment industries. The rating or labeling systems cover some of these online practices, but not others. For example, the ESRB system does not require companies to display the content descriptors on their Web Site, except on the purchase page. Also, the music labeling system currently imposes no requirements or guidelines for Internet advertisements or promotions for labeled recordings. In late August 2000, the RIAA announced its recommendation that, effective October 1, 2000, recording industry members should adopt a policy that the parental advisory label appear prominently in online retail sites in all stages of the transaction, and that online retail sites should link to the entertainment industry's Web site, www.parentalguide.org, where more information on the rating and labeling systems may be found.

7. The electronic games retailers were: Amazon.com, Beyond.com, Checkout.com, Gamestop.com, and Toysrus.com; the products sold were five M-rated electronic games: *Resident Evil 3*, *Dino Crisis*, *Blue Stinger*, *Turok: Rage Wars*, and *Quake III Arena*. The music retailers were: Amazon.com, Bestbuy.com, CDnow.com, Towerrecords.com, and Samgoody.com (a subsidiary of Musicland). The music products were five CDs that contained explicit lyrics in their unedited versions: Metallica *(S&M)*, Dr. Dre (*2001*), Korn (*Issues*), Limp Bizkit (*Significant Other*), and Nas (*Nastradamus*). The movie retailers were: Amazon.com, CDnow.com, Towerrecords.com, Reel.com (a wholly owned subsidiary of Hollywood Video) and Samgoody.com; the products included two PG-13-rated movies (*The Mummy* and *Entrapment*) and three R-rated movies (*The Matrix*, *8MM*, and *Payback*).

8. By "vertical portals/content aggregator sites," Ms. Rollow referred to popular sites relating to entertainment content that are not maintained by the content producers, including sites IMDB, ign.com, videogames.com, mtv.com, ubl.com, mp3.com, e!online, and Hollywood online. Ms. Rollow's report is on file with the Commission.

9. *See, e.g.*, *Financial Literacy*, *supra* note 5 (9% of 12th graders had their own credit card, 18% used their parents' credit card, and another 3% use both their own card and their parents' card). Although credit cards now account for 95% of all transactions on the Web, at least one Internet consulting firm predicts that new payment mechanisms – such as cash and checking account transfers, and pre-paid and debit card arrangements – will drive down credit cards' share of the online market to 75% of all transactions by 2003. *See* National Association of Recording Merchandisers, *Internet Payments: Consumer Needs and Merchant Costs Will Drive New Mechanisms*, NARM Research Briefs 4 (Jan. 2000) (citing statistics from Internet research firm Jupiter Communications). Although some of this innovation is due to consumers' fears about privacy and security of credit card information on the Internet, much of it is due to marketers' desire to capitalize on children's large discretionary spending power. *Id.*

10. *See generally* Warren Cohen, *Less Angst for Teen Shoppers*, The Standard, Aug. 7, 2000, www.thestandard.com/article/display/0,1151,17470,00.html (visited Aug. 7, 2000); Rebecca Winters, *Electronic Allowances*, Time, Nov. 15, 1999, at 116N; Bob Thompson, *The Selling of the Clickerati*, The Washington Post, § W (Magazine), Oct. 24, 1999 at 11; Bob Tedeschi, *E-Commerce Sites Target Next Generation of Buyers*, N.Y. Times, Mar. 29, 1999, http://search1.nytimes.com/search/daily/bin/fastweb?getdoc+cyber-lib+cyber-lib+2799+0+wAAA+tedeschi%7Enext%7Egeneration (visited Sept. 1, 2000). Some of the more high profile companies include: RocketCash, ICanBuy, DoughNet, InternetCash, Cybermoola, Cobaltcard, and EPocketCash. In addition to facilitating young consumers' ability to shop online, RocketCash, ICanBuy, and DoughNet allow children to learn about personal finances, make charitable gifts, and/or engage in banking activities online. *See* www.rocketcash.com, www.icanbuy.com, and www.doughnet.com.

11. Some sites are designed for children as young as five, while others focus on the "tween" (or pre-teen) and teen demographic. ICanBuy, which provides a high level of parental control, advertises its products to young consumers with the slogan: "No credit card? No worries. Now Teens and Kids can shop, bank & donate online." *See* www.icanbuy.com. Cybermoola, a pre-paid card company, distributes "Free Cybermoola," at schools, shopping malls, and teen events nationwide in $20.00 increments as part of the company's advertising and promotional efforts.

See It's Beginning to Look a Lot Like Christmas Online, PR Newswire, Oct. 7, 1999 (press release), www.cybermoola.com. Cobaltcard describes itself as "an Internet-based buying card for the online generation – young adults ages 13-22. Cobaltcard is a buying card, not a credit card, that allows members to buy online and in stores debt free." *See* www.cobaltcard.com. There are also new products, such as InternetCash, a pre-paid stored value card consumers can use at about 100 online Web sites, that are intended to appeal to people other than teens. Nonetheless, young consumers are an important part of InternetCash's market, and many of the site's retail partners are youth-oriented. Recently, the featured merchants and products on InternetCash.com's home page included The Sixth Sense DVD at MyVideoStore.com, Sega Dreamcast at FuncoLand, Nike Ambient Frozen Watch at Watch Station, and Skateboarding and Paintball equipment at The Sports Alternative. *See* www.internetcash.com (visited July 17, 2000). EPocketCash is a financial product that allows consumers to make payments to Internet vendors from an account that the consumer sets up at an established bank or financial institution. Although it is not intended primarily for young consumers, an announcement on its Web site states: "Depending on local regulations, even teens can hold an EPocketCash account." *See* www.epocketcash.com/en/consumers/index.htm (visited Aug. 8, 2000).

12. Large online entertainment retailers like Amazon.com, Inc., CDNow, Inc., Hollywood Video (Reel.com), MTS, Inc. (Tower Records), Toys "R" Us, and Trans World Entertainment Corp., as well as smaller speciality entertainment outlets, have partnered with these new sites to sell their products to children. A preliminary assessment shows that these new mechanisms are beginning to catch on: teenagers, especially boys, increasingly are buying entertainment products such as CDs, videos, and electronic games online. *See* Tedeschi, *supra* note 10 (citing analysis by Teenage Research Unlimited).

13. ICanBuy, for example, offers several features to limit children's purchases. It requires parental consent (and a credit card) to set up a child's account, offers a "permissions" mechanism for parental monitoring of purchases, and provides children with access only to a modified version of its affiliated retailers' sites, which have been screened for age-inappropriate products. For example, ICanBuy shopping retailer amuZnet offers only the edited or clean versions of stickered music recordings. *See* www.icanbuy.com; Thompson, *supra* note 10.

14. Some of the Web sites prohibit their affiliated retailers from offering certain age-inappropriate products, such as pornography, alcohol, guns, hate literature, and labeled music recordings, but do not filter out all media with violent content or enforce their policies with retailers. RocketCash has screened out certain adult-oriented materials from its affiliated retailer sites, but still permits children access to some CDs with profane lyrics and to violent electronic games, unless their parents have put limits on certain sites and types of merchandise. *See* Steve Ginsberg, ***Internet Wallets for Teens***, San Francisco Chronicle, Sept. 6, 1999, at C1 (quoting RocketCash co-founder Carol Kruse). Cybermoola encourages its participating retailers to offer only age-appropriate products, but does not monitor or guarantee that its affiliated merchants will do so. *See* Extract from Cybermoola.com Terms & Conditions, available at www.cybermoola.com/what/termsandconditions.htm (visited July 17, 2000):

> **Age Appropriate Merchandise:** Because the Cybermoola Payment Program is directed primarily to teenagers, we ask all merchants and retailers participating in

> the Cybermoola Payment Program to refrain from offering any products inappropriate for viewing, use or access by teenagers, including (without limitation) pornography, hate literature and alcohol. Be advised, however, that we do not investigate or review these sites to determine their compliance with this request, and we can not [sic] guarantee that each complies with it at all times.

15. Several site operators have implemented mechanisms such as "parent accounts" that allow parents to monitor or restrict their children's purchases from certain retail outlets, although some of these mechanisms are imperfect. ICanBuy, RocketCash, DoughNet, and cobaltcard allow parents to set up parent memberships or accounts that permit them to oversee the purchases that their children make by screening out certain vendors or setting spending limits. But RocketCash co-founder Carol Kruse explains that not many parents have blocked their children from purchasing certain categories of products. *See* Ginsberg, *supra* note 14. And DoughNet explains that it permits "parent members to block children from purchasing or donating with specific merchants and nonprofits through our Site," but cautions that

> fundamentally, we cannot control where children go using our Site. Thus, in all cases Parent Member should either supervise its Child Members when using our Site or use parental control protections. Parental control protections (such as computer hardware, software, or filtering services) are commercially available that may help limit access to material that is harmful to minors.

See Doughnet, Inc. Member Agreement, available at www.doughnet.com/m/legal.jsp (visited Aug. 7, 2000).

16. For example, InternetCash does not provide any limits or parental control mechanisms on the products it sells to children. Indeed, InternetCash's President and CEO touts his company's lack of restrictions as a selling point for teenagers: "The difference between us and them [sites that require a credit card or provide a mechanism for parental supervision] is that you do not need to ask your parents for their credit card." Quittner, *supra* note 5. He believes that, "It will ultimately be the retailer's responsibility, if they are selling [products like pornography and guns] requiring age verification." *Id.*

Appendix I

TELEVISION, PRINT, AND ONLINE DEMOGRAPHICS

I. POPULAR TELEVISION SHOWS AMONG TEENAGERS

Program	Network	Ranking (12 - 17)	% Audience (6 - 17)[1]
NETWORK SHOWS		**Network Ranking**[2]	
Simpsons	FOX	3 / 2 / 2	24.8
WWF Smackdown	UPN	– / 10 / 3	36.5
X-Files	FOX	21 / 16 / 12	not available[3]
That '70s Show	FOX	17 / 7 / 16	not available
King Of The Hill	FOX	4 / 15 / 19	22.6
Dawson's Creek	WB	8 / 9 / 20	34.6
Buffy the Vampire Slayer	WB	38 / 26 / 23	30.0
Smart Guy	WB	32 / 35 / –	not available
South Park	COM	not available	21.2
Saved By The Bell	TBS	not available	34.1
Teen Summit	BET	not available	36.4
Total Request Live	MTV	not available	62.0

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[1] This column shows what percent of a show's audience was between the ages of 6 and 17 during the time period between September 20, 1999 and June 4, 2000.

[2] Network broadcast shows are ranked separately from syndicated shows. The first number is for the time period 9/22/97 to 9/20/98, the second number is for the period 9/21/98 to 9/19/99, and the third number is for the period 9/20/99 to 4/30/00.

[3] The percentage of the teen and preteen audience for several of the shows listed in this table and the Nielsen ranking of the popularity with teens of the listed cable network shows were not available at the time this report was finalized.

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Program	Network	Ranking (12 - 17)	% Audience (6 - 17)
SYNDICATED SHOWS		**Syndicated Ranking**[4]	
Simpsons	syndicated	1 / 3 / 1	not available
WWF Wrestling	syndicated	2 / 1 / –	not available
WCW Wrestling	syndicated	3 / 2 / –	not available
Xena: Warrior Princess	syndicated	9 / 11 / 8	22.6
The Wayans Brothers	syndicated	– / 21 / 10	not available
Hercules: The Legendary Journeys	syndicated	12 / 16 / 12	22.2
Baywatch	syndicated	19 / 18 / 13	not available
X-Files	syndicated	16 / 19 / 20	not available
V.I.P.	syndicated	56 / 31 / 23	not available

Compiled from NielsenTV National People Meter data (9/22/97 - 6/4/00).

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[4] The first number is for the time period 9/29/97 to 9/27/98, the second number is for the period 9/28/98 to 9/26/99, and the third number is for the period 8/30/99 to 4/23/00.

II. MAGAZINE READERSHIP DEMOGRAPHICS

Magazine	% of Audience Under Age 18	Median / Average Age Of Audience
Jump	90%	15.7 / –
Teen People	77.4%	16 / –
Right On!	77%	16 / –
Metal Edge	76.2%	16 / 16.2
Thrasher	73.2%	17.5 / 16.3
Expert Gamer	68%	15 / 19
GamePro	62%	– / 18
YM	59.9%	17.1 / –
Electronic Gaming Monthly	59%	16 / 20
Unofficial PlayStation Magazine (PSM)	54% (18 or younger)	– / 21
Seventeen	50%	18 / –
Blaze	47.6%	18.5 / –
Vibe	43.6%	19.6 / –
WWF Magazine	43% (between ages 12 and 17)	– / –
Disney Adventures	(target ages 6 to 12)	– / –
Nickelodeon	(target ages 6 to 14)	– / –
DC Comics - Kids	–	8.3 / –
Marvel Comics - Junior	–	9.3 / –
Sports Illustrated for Kids	–	11.5 / –
Marvel Comics - Senior	–	13.9 / –
TransWorld Skateboarding	–	15.8 / 15.2
DC Comics - Teen	–	16.8 / –
Teen	–	17 / –
Heckler	–	17 / 19
Hit Parader	–	– / 17.6
Warp	89% (under 20)	– / 16
Tips and Tricks	77.1% (under 24)	– / 20

Compiled from magazine media kits, company submissions, and company press releases. The Commission looked primarily at data showing the percentage of readers or subscribers under age 18, as well as the median and average age of the readers or subscribers.

III. WEB SITE VISITOR DEMOGRAPHICS (% SHARE OF CHILDREN AGES 12 TO 17)

Web Site	Mar 2000	Apr 2000	May 2000	June 2000
bolt.com	28.8%	44.9%	38.8%	37.8%
cdnow.com	23.6%	35.1%	34.9%	33.2%
eminem.com	41.9%	54.3%	44.6%	54.7%
farmclub.com	17.2%	35.1%	28.1%	29.2%
gamespot.com	32.4%	39.1%	38.4%	41.7%
happypuppy.com	27.6%	48.8%	35.0%	28.2%
ign.com	32.6%	43.1%	45.9%	44.0%
korn.com	34.8%	46.6%	49.9%	-
launch.com	18.1%	38.8%	30.8%	29.4%
limpbizkit.com	28.0%	45.4%	56.9%	-
mtv.com	24.4%	41.9%	39.6%	39.7%
peeps.com	19.8%	41.9%	39.5%	41.3%
sonicnet.com	20.0%	36.0%	26.1%	34.8%
sonymusic.com	27.1%	40.8%	29.8%	28.1%
ubl.com	30.7%	45.0%	43.4%	42.8%
wallofsound.com	23.9%	38.2%	28.1%	41.9%

Compiled from PC Data Online Reports (March 2000-June 2000).

Appendix J

ELECTRONIC GAME INDUSTRY COMPLIANCE WITH SELF-REGULATORY CODE REQUIREMENTS TO DISCLOSE RATING INFORMATION ON PRODUCT PACKAGING, IN ADVERTISING, AND ONLINE

As discussed in Section VI of the Report, the electronic game industry's self-regulatory system has a detailed code of conduct governing the advertising of electronic games. The Interactive Digital Software Association's Advertising Code of Conduct ("IDSA" and "Adcode") sets forth numerous requirements concerning the display and use of rating icons and descriptors on product packaging and in print, television, and Internet advertising. This Appendix discusses industry compliance with these requirements. Because the motion picture and music recording industries do not currently have similarly detailed advertising requirements, there is no parallel discussion of those industries.[1]

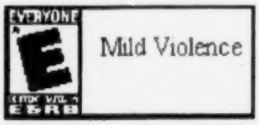
I. PRODUCT PACKAGING

As a condition for obtaining a rating from the Entertainment Software Rating Board ("ESRB"), companies are required to place the assigned ESRB rating icon on the lower right or left portion of the front of the package, and any content descriptors in a rectangular box on the lower portion of the back of the package.[2] The rating icon must also be displayed on all cartridges, CDs, and floppy disks.[3]

The Commission reviewed the packaging of 24 of the M-rated games recently published by the 11 companies contacted by the Commission for this Report. Of the reviewed games, 15 were for console systems, while nine were made for personal computers ("PCs"). The Commission found a high level of compliance with the Adcode's packaging requirements. The packaging for each console game, and every PC game but one,[4] fully complied with the requirements for the appearance and location of rating icons and content descriptors.

II. PRINT ADVERTISING

According to the Adcode, print advertising includes advertising in newspapers, magazines and comic books, in-store displays at retailers, and consumer mailings.[5] It does not include giveaways such as key chains, balls, hats, and T-shirts.[6] Before January 31, 2000, the Adcode required the rating icon (but not the content descriptors) to be included in all print advertising promoting single titles.[7] Effective January 31, 2000, the Adcode added the requirement to display the content descriptors with the rating icon in print advertising, using the following format:



To assess industry compliance with the Adcode's advertising requirements, the Commission reviewed print ads that appeared in various issues of four popular gaming enthusiast publications – *GamePro*, *PC Gamer*, *Computer Gaming World*, and *Electronic Gaming Monthly* – during an 18-month period (January 1999 - June 2000).[8] The review found that at least 16 companies placed five or more ads without any rating information, with two companies each placing at least 33 ads without any rating information.[9] Ten of the 11 companies contacted by the Commission for this Report placed at least one ad without any rating information during the 18-month period.

Beginning with the February 2000 issues,[10] the Commission also reviewed these publications for use of content descriptors in game ads. This review found that through the June 2000 issues, at least 13 companies had placed five or more ads *without* descriptors, despite the new requirement to include descriptors in print ads. All 11 of the companies contacted placed at least one ad that did not contain descriptors. The level of industry compliance may be improving. For example, in the September 2000 issue of *Electronic Gaming Monthly*, 26 out of 28 ads for games included both the rating icon *and* content descriptor(s).

III. BROADCAST ADVERTISING

Before January 31, 2000, the Adcode required the rating icon (but not the content descriptors) to be included in all television advertising promoting single titles.[11] Effective January 31, 2000, the Adcode also requires television ads to include a voice-over stating the rating of the game, *e.g.*, "*Rated M for Mature*."[12]

The Commission's review of several television shows during the months of March and April 2000 revealed that game commercials were in compliance with basic Adcode provisions concerning proper visual disclosure of the rating icon and voice-overs of rating information. Each ad had a visual disclosure of the rating icon, and only one ad for an M-rated game failed to include a voice-over statement about the rating.

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IV. ONLINE PROMOTIONS

The Adcode has several specific requirements regarding the disclosure of rating information when a game publisher promotes a game on its Web sites. Web sites must include the rating icon and, on the purchase page, any applicable content descriptors issued by the ESRB for that title.[13] For game demos and trailers accessed online, the company must display the rating icon next to the name of the game on the Web page where the demo and/or trailer is accessed or on the specifications page before the demo download.[14] Online stores run by the publisher must include the rating icon *and* content descriptors on the page where game information, i.e., price, is provided.[15] In December 1999, the Commission reviewed 40 game publisher Web sites to examine the extent to which rating information was disclosed at those sites.[16] The methodology of this review is discussed in Appendix H. Eighteen companies, 14 of which are IDSA members, operate these sites. In general, the IDSA members showed better compliance with the Adcode than nonmembers.[17]

The review found no site in full compliance with the Adcode's online requirements. Although three-quarters of the sites complied with the basic requirement to display the ESRB rating icon,[18] less than 30% displayed the rating icon where a demo could be downloaded or viewed,[19] and only 9% displayed the content descriptors at the point where one could order a game.[20] Although not specifically required by the Adcode, none of the 40 sites visited made any attempt to verify the age of individuals ordering products; however, some sites stated that one must be 18 to place an order for a game.[21]

Web site Adcode Issues	*ESRB rating displayed?*	*ESRB content descriptors displayed?*	*Game clip available for downloading or viewing?*	*Rating at point of download/ viewing?*	*Games offered for sale?*	*ESRB rating at point-of-sale?*	*ESRB content descriptors at point-of-sale?*	*Age check for ordering M-rated games?*
Summaries by sites	30 Yes 10 No	4 Yes 36 No	29 Yes 11 No	8 Yes 21 No 11 N/A	32 Yes 8 No	24 Yes 8 No 8 N/A	3 Yes 29 No 8 N/A	32 No 8 N/A
Percentage Yes	75%	10%	70%	28%	80%	75%	9%	0%

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ENDNOTES

1. As noted in Section IV.D of the Report, in late August 2000, the Recording Industry Association of America recommended that recording industry members follow revisions to the parental advisory labeling program, to be effective October 1, 2000. These revisions include recommendations that the parental advisory label or other prominent notice of explicit content should appear in print advertising for explicit-labeled recordings, and in online retail sites throughout all stages of the transaction.

2. Adcode, V.A-D, G (June 30, 1999).

3. Adcode, V.H. Any samplers or "demos" and trailers included in software rated by the ESRB must be submitted to the ESRB for review, and the ESRB classifies it as either "Suitable for ALL Users" or "Suitable for MATURE Users." Adcode, VII.D. Product packaging must contain a descriptor informing the consumer that the package includes demos and/or trailers and of the applicable ESRB rating. Adcode, VII.E. The product packaging rules apply also to demo disks used to promote a game or multiple games, with one notable exception: the rules do not require publishers to place a content descriptor for the sampler itself on the packaging containing the sampler; they require only that the rating icon or icons for the game or games appear on the disk. Adcode, VI.I.O.

4. One PC game did not have the ESRB rating on the game CD itself and also placed the descriptors on the bottom, rather than the back, of the box.

5. Adcode, VI.B, G.

6. Adcode, VI.G.

7. Adcode, VI.C.

8. The Commission reviewed nine issues of *PC Gamer*, 13 issues of *Computer Gaming World*, 16 issues of *Electronic Gaming Monthly*, and 18 issues of *GamePro*.

9. Of the 11 companies contacted by the Commission for this Report, the three least compliant placed ads without rating information in, respectively, 33 out of 109 ads without rating information (30%), 33 out of 158 ads without rating information (21%), and 26 out of 215 ads without rating information (12%).

10. Generally, the February issues were placed in circulation in mid-January.

11. Adcode, VII.A.

12. This voice-over requirement applies to television spots longer than 15 seconds. For spots 15 seconds or shorter, the required voice-over is shortened to "Rated M."

13. Adcode, VII.B, D. The Adcode also specifies requirements for the ESRBi Interactive ("ESRBi") system. Adcode, IX. That system applies to products like entertainment Web sites and Web pages, games, or "Entertainment Interactive Arenas," such as chat rooms, bulletin

boards, or multi-player gaming areas. Adcode, IX.A. Under the ESRBi system, the ESRBi rating icon and content descriptors must appear on the home page of an entertainment Web site or in the site's navigational bar, on the first Web page of a section of Web pages rated by the ESRB, the Web page where a game is accessed, or at the point where an Entertainment Interactive Arena is accessed. Adcode, IX, C-F. Additionally, the Adcode provides that the disclaimer, "The content of this site/page/game (select as appropriate) may change due to interactive exchanges," must be included at the bottom of the page where the ESRBi icon is displayed. Adcode, IX.B.

14. Adcode, VIII.C.

15. Adcode, VIII.D.

16. In addition, the Commission reviewed the sites of five game developers (all non-IDSA members). None of these sites displayed the game's rating anywhere on the site. This review highlights an apparent weakness of the Adcode in that it covers only the company that submits a game to the ESRB for rating, typically the game publisher. Accordingly, game developers, who generally do not submit games for rating, can promote and sell their games online outside the restrictions of the Adcode.

17. Both IDSA and non-IDSA members agree to follow the Adcode requirements for disclosure of rating information as a condition for obtaining a rating from the ESRB.

18. For the 14 IDSA members' sites, nine consistently displayed rating icons somewhere on the site for that specific game, while five companies were inconsistent (some games had rating icons while others did not), or showed no rating icons. Two of the four nonmembers consistently displayed the rating icon somewhere on the site for that specific game; the other two were inconsistent or displayed no rating icons.

19. Despite industry guidelines that require placement of the rating icon on the page where a game demo or trailer is downloaded, only four of 12 IDSA members that offered demos or trailers did this consistently (two were inconsistent in their use of the rating icon, and six did not use rating icons). The nonmembers, as a whole, did not place the rating icon at the point of download (one did not offer demos or trailers). The game trailers and demos themselves are not required to contain rating information.

20. The Adcode requires *both* the rating icon and content descriptors to appear on ordering or purchase pages. Adcode, VIII.D. Nine of the IDSA member company sites placed the rating icon on the purchase page, two showed no rating icon, and three did not offer the game for sale. Of the nonmembers, one placed the rating icon on the purchase page and three did not. Of the 15 companies that offered games for sale online, only one company, an IDSA member, displayed the content descriptors at the point of sale.

21. In a followup review conducted in May 2000, one site from each of the 18 companies was randomly revisited to determine if compliance had improved. Only one company had made changes to comply with the online Adcode. No company was in complete compliance, and none of the game developer sites had made changes to improve compliance.

Appendix K

APPLICATION OF ANTITRUST PRINCIPLES TO VOLUNTARY INDUSTRY EFFORTS TO RESTRICT MARKETING AND SALES OF VIOLENT ENTERTAINMENT TO CHILDREN

Industry self-regulatory efforts to discourage marketing and sale of entertainment media products with violent content to children can take various forms, such as: (i) creation and operation of rating systems to identify and classify those products that warrant parental caution; (ii) industry self-regulatory codes that prohibit members from selling, renting, or marketing such restricted products in a way that undercuts the effectiveness of parental cautions; (iii) trade association rules that provide sanctions for failing to adhere to such a self-regulatory code; (iv) actions by manufacturers to discourage retailers from selling or renting violent products that warrant parental caution to children; and (v) advertising restraints, such as agreements with media members or groups to screen all advertising from manufacturers for excessively violent content. Although each of these measures has a somewhat different competitive implication, none is likely to violate the antitrust laws so long as the rules are sensibly designed and implemented to achieve the stated objective and not restrict competition in ways unrelated to the basic objective.[1]

Rating Systems. The creation and operation of a rating system to identify and classify entertainment products that warrant parental caution is unlikely to have a restrictive effect on competition because a rating system generally would not restrict the products that may be produced or sold.[2] Rather, the function of a rating system is informational. Like a safety standard for products, a rating system conveys information about the suitability of a product for a particular use. Rather than restrict competition in the market, a well-designed rating system can enhance the functioning of the market by enabling consumers to make useful comparisons and purchase decisions with minimal search costs.[3] A rating system may increase overall demand for products by reducing consumer confusion or uncertainty, and by increasing consumer confidence that the relevant attributes of the product will be as advertised.[4]

Restriction on Sales and Marketing to Children. Industry codes that prohibit members from selling, renting, or marketing certain entertainment products to children constitute a higher level of self-regulation, and could be challenged as agreements to restrain competition. So long as the industry limits the restraint to children, competition in sales to the adult audience is not likely to be affected. With respect to children, the restraint is fundamentally different from the typical price-output restraint where competitors collectively seek to restrict supply and raise prices, and reap the economic benefits of the restraint: An agreement to refrain from sales to children would appear to be against the firms' immediate economic self-interest. Revenues from sales to children would not be enhanced; rather, they would decline (to zero, if the restraint is fully effective). The presence or absence of economic self-interest in imposing a restraint is a relevant consideration in assessing the asserted justifications.[5] Lack of economic self-interest would tend to lend greater credence to those justifications.[6] Here, the restraints would appear to reflect a determination not only by the industry, but also by the broader public, that sale to children of entertainment products that warrant parental caution is inappropriate.[7] Further, the sale of such products to children could undermine the efficient functioning of the market by creating mistrust of the industry and apprehension among consumers, possibly leading to a longer-term dampening effect on overall sales.[8] Consequently, restrictions on sales to children appear likely to have a legitimate justification if appropriately targeted.[9]

Disciplining Members for Non-Compliance. Industry codes that impose disciplinary measures on members that fail to adhere to rules regarding the sale, rental, or marketing of restricted entertainment products to children are yet another step in the self-regulatory process. Possible forms of discipline might include expulsion from membership in the association, or other withdrawal of membership privileges. Such rules could be challenged as an agreement to restrain the competition offered by the disciplined member. Although such disciplinary actions potentially could affect the disciplined member's sales not only to children but also to other segments of the market, they generally are unlikely to impose a significant restraint on competition unless two conditions are present: (i) the withdrawal of membership or of membership privileges would substantially impair the disciplined member's ability to compete, and (ii) the market has so few competitors that the loss of one competitor would significantly lessen competition.[10] These conditions appear unlikely to be found in the entertainment media industry. Association membership generally is not so important that loss of membership would effectively exclude a firm from the market. In addition, there may be a sufficient number of other firms to keep the market competitive even if one firm were expelled from membership for violating the codes. The use of clear and fair procedures in the design, implementation, and enforcement of such restrictions should further lessen any antitrust concerns.[11] Such procedural safeguards help ensure that the self-regulatory group's actions are impartial and not calculated to gain an economic or competitive advantage. Further, such rules may be justified because the

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prohibited conduct, if left unchecked, may subvert or distort the competitive process if other firms succumb to a temptation to compete at the same level and consumers lose confidence in the industry's ability to properly market its products. Thus, appropriately designed code mechanisms to enforce reasonably designed restrictions also are likely to avoid antitrust problems.

Actions Against Retailers. Entertainment media producers might also act collectively to discipline retailers that sell or rent restricted products to children. An appropriately structured collective action of this type appears unlikely to violate federal antitrust laws. As with a collective self-restriction on such sales by producers themselves, a restraint directed toward inappropriate retailer sales is fundamentally unlike other restraints because it is contrary to immediate self-interest.[12]

Advertising Restraints. Efforts by producers to place appropriate limitations on the advertising of products that warrant parental caution need not restrict competition unreasonably. If, as suggested above, it is reasonable to impose certain restrictions on actual sales of inappropriate products to children, it should be reasonable under the antitrust laws to restrict advertising of these products to children. So long as the content and means available for marketing these products to adult audiences are not unduly restricted, consumers will continue to have access to product information, and sellers can continue to compete for their patronage.[13] Consequently, self-regulation reasonably tailored to prevent the advertising of restricted entertainment products to children should not impose a significant restraint on legitimate competitive activity. In fact, reasonable self-regulation should further the competitive process by focusing competitive efforts on legitimate marketing activities and by lessening the need for government regulation.

ENDNOTES

1. The antitrust laws are concerned about conduct that unreasonably restricts competition (*e.g.*, increases prices, reduces output, lowers quality or variety, or lessens innovation) and harms consumers. Self-regulation reasonably designed to discourage the marketing to children of entertainment media products that warrant parental caution – without undue effects on marketing to adults – is unlikely to have those prohibited effects. Under the antitrust laws, the legal test applicable to most kinds of self-regulation is called the "rule of reason." This test has two components: (1) whether the conduct significantly restricts competition; and (2) whether there are legitimate justifications for the conduct that further, rather than restrict, the competitive process. *See, e.g., Chicago Board of Trade v. United States,* 246 U.S. 231 (1918). The rule of reason test requires a balancing of these two elements. The exceptions to the application of the rule of reason test involve agreements that are not truly efforts at self-regulation, but rather are attempts to fix prices, restrict price competition, reduce output, or exclude competitors, without any legitimate justification. Such agreements are *per se* unlawful.

2. However, manipulation of a rating system to put a product in a restricted category without substantial justification can be problematic. *See Allied Tube & Conduit Corp. v. Indian Head,* 486 U.S. 492 (1988) (manufacturers of metal pipe unlawfully manipulated the certification process to deny market access for manufacturers of plastic pipe). Participation in the process by persons without an economic interest in stifling competition can help ensure that the result is not anticompetitive. *See id.* at 501 ("When . . . private associations promulgate safety standards based on the merits of objective expert judgments and through procedures that prevent the standard-setting process from being biased by members with economic interests in stifling product competition, those private standards can have significant procompetitive advantages." (citation omitted)). This suggests that public input into private industry's efforts to block children's access to products that warrant parental caution would tend to reduce antitrust risk.

3. *See Clamp-All Corp. v. Cast Iron Soil Pipe Inst.*, 851 F.2d 478, 487 (1st Cir. 1989) (Breyer, J.). *See also Tropic Film Corp. v. Paramount Pictures Corp.*, 319 F. Supp. 1247, 1254 (S.D.N.Y. 1970) (independent movie producer sought preliminary injunction against movie studio's refusal to distribute an unrated film, alleging violations of Sections 1 and 2 of the Sherman Act and asking the court to enjoin Paramount and the MPAA from carrying on an asserted industry-wide refusal to deal in and distribute, advertise, and exhibit the film *Tropic of Cancer* without an X rating; court denied the motion, stating that the rating system was "not designed to eliminate competition, but to advise motion picture exhibitors and, through them, the public, of the content of films which the Supreme Court has held that states have the constitutional right to prevent minors under seventeen from viewing").

4. *See generally* Self Regulation and Antitrust, Prepared Remarks of Robert Pitofsky, Chairman, Federal Trade Commission, Before the D.C. Bar Association Symposium (Feb. 18, 1998).

5. *See FTC v. Superior Court Trial Lawyers Ass'n,* 493 U.S. 411, 427 (1990) (rejecting asserted First Amendment justification of boycott by court-appointed trial lawyers seeking higher fees; stating that the justification is not available to a boycott conducted by business competitors who "stand to profit financially from a lessening of competition in the boycotted market") (quoting *Allied Tube & Conduit*, 486 U.S. at 508)); *United States v. Brown University,* 5 F.3d 658, 677–

78 (3d Cir. 1993) (discussing contours of rule of reason analysis of an arrangement among universities to determine the level of financial aid to be offered needy students); *Kreuzer v. American Academy of Periodontology*, 735 F.2d 1479, 1494 (D.C. Cir. 1984) (analyzing professional rule imposed by dental society, stating that "[w]hen the economic self-interest of the boycotting group and its proferred justifications merge the rule of reason will seldom be satisfied"); *cf. NAACP v. Claiborne Hardware Co.*, 458 U.S. 886 (1982); *Missouri v. National Org. for Women*, 620 F.2d 1301 (8th Cir. 1980).

6. *See United States v. Brown University*, 5 F.3d at 677 ("To the extent that economic self-interest or revenue maximization is operative . . . , it too renders [defendant's] public interest justification suspect.").

7. That the restraints have broader public origins, and are not imposed solely by agreement of competitors, is a relevant consideration. The Supreme Court has been skeptical of arguments that competitors should be permitted to restrict consumer choice on grounds that consumers may make "unwise" or "dangerous" decisions under competitive market conditions. *See National Soc'y of Prof'l Engineers v. United States*, 435 U.S. 679 (1978). In *Professional Engineers*, an association attempted to justify a ban on competitive bidding by claiming that such competition would lead to "deceptively low bids, and would thereby tempt individual engineers to do inferior work with consequent risk to public safety and health." *Id.* at 693. The Supreme Court rejected the asserted justification, explaining that "the Rule of Reason does not support a defense based on the assumption that competition itself is unreasonable." *Id.* at 696. In contrast, an agreement to refrain from marketing restricted entertainment products to children would reflect a broader societal view that a portion of the marketplace should not be available to children, not simply a judgment by competitors that competition should be restrained.

8. Further, it is not entirely clear that the prohibited conduct – selling to children products that warrant parental caution – is one that the competitive process is intended to foster. Professional associations often adopt ethical standards to govern members' conduct. Such agreements are permissible so long as they do not unreasonably restrict competition.

9. Reasonable self-regulation to prevent marketing of restricted products to children, therefore, would not necessarily conflict with the ruling of the Supreme Court in *Professional Engineers*, 435 U.S. 679, where the Court held that the rule of reason analysis is limited to competitive considerations. Reasonable self-regulation to prevent marketing of such products to children can assist the functioning of the market as well as serve broader societal interests. The situation in *Professional Engineers* was different. As noted above, in *Professional Engineers*, an association attempted to justify a ban on competitive bidding by claiming that such competition would lead to "deceptively low bids, and would thereby tempt individual engineers to do inferior work with consequent risk to public safety and health." *Id.* at 693. The Supreme Court rejected the asserted justification.

10. *See Northwest Wholesale Stationers, Inc. v. Pacific Stationery & Printing Co.*, 472 U.S. 284, 296 (1985) (expulsion from a purchasing cooperative did not create a probability of anticompetitive effect "unless the cooperative possess[ed] market power or exclusive access to an element essential to effective competition").

11. *See, e.g., Allied Tube & Conduit*, 486 U.S. at 501.

12. *See supra* text accompanying notes 3–4. However, there may be some antitrust risk if manufacturers seek to preclude a retailer from dealing with a non-member manufacturer. *See Fashion Originators' Guild v. FTC*, 312 U.S. 457 (1941) (group of designers of higher-priced dresses unlawfully boycotted outlets that dealt with manufacturers that "pirated" the higher-priced designs).

13. Even if a restricted advertising venue has a substantial audience suitable for the advertised product, as well as a significant underage audience, competition will not be significantly affected if firms have adequate access to other, permissible advertising venues that reach adults. Only if the various advertising or marketing restrictions, taken together, significantly restrict the flow of information to adult consumers might there be an antitrust concern.

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